

File No. 250189

Committee Item No. 5

Board Item No. 9

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 9 2025

Board of Supervisors Meeting Date April 15, 2025

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| | | • PRT Staff Report on Budget |
| | | • MYR Memo 2/25/2025 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Draft MOU |
| | | • Regarding Jurisdiction, Acceptance, and Maintenance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| | | • Draft Lease and Loan Agreement |
| | | • Draft Management Agreement |
| | | • Draft PG&E License (Electric) |
| | | • Draft PG&E License (Gas) |
| | | • Draft PG&E Absolving Service Agreement |
| | | • Draft Mission Rock Utilities, Inc. License |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER [\(Click on hyperlinks to be forwarded to the Legislative Research Center to view the entirety of voluminous documents\)](#)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Draft Interdepartmental Master Encroachment Permit and Maintenance Agreement</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Draft Fourth Amendment to Master Lease |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Draft Partial Release Master Release and DDA |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Draft Offer of Improvements |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | General Plan Referral 2/6/2025 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | PRT Memo 020725 and PRT Resolution Nos. 25-05 and 25-06 021125 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | PRT Presentation to Port Commission 2/11/2025 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | PRT Presentation 4/9/2025 |
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Completed by: Brent Jalipa Date April 3, 2025

Completed by: Brent Jalipa Date April 10, 2025

[Port Park Lease and Loan, Management Agreement, and Utilities Licenses and Absolving Services Agreement - Mission Rock]

Ordinance approving and waiving competitive solicitation obligations for a Port Commission Park Lease and Loan for China Basin Park and for a Management Agreement for adjacent public and open spaces between the Port and an affiliate of Seawall Lot 337 Associates, LLC, Developer of the Mission Rock Project bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay (“Project”); approving a Port Commission License with Mission Rock Utilities, Inc., a private utility provider servicing the Project; and approving two Port Commission Licenses and an Absolving Services Agreement with Pacific Gas and Electric Company to facilitate gas service to private property in the Project area and electric power service to the Third Street Bridge Pilot House; and affirming the Planning Department’s determination under the California Environmental Quality Act, and its findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

(a) In January 2018, the Port Commission adopted Resolution No. 18-03 approving the terms of a Disposition and Development Agreement (“DDA”), between the Port of San

1 Francisco ("Port") and Seawall Lot 337 Associates, LLC, a Delaware limited liability company
2 ("Developer"), and related transaction documents that are incorporated into the DDA, for the
3 development of approximately 28-acres located along the Port's Central Waterfront and
4 commonly referred to as "Mission Rock" (the "Project"), comprised of (1) Seawall Lot 337,
5 bounded by Third Street on the west, Mission Rock Street on the south, Pier 48 to the east,
6 and China Basin Park on the north; (2) Pier 48; (3) China Basin Park; (4) the marginal wharf
7 between Pier 48 and Pier 50; and (5) Parcel P20 (collectively, the "Site").

8 (b) In February 2018, the Board of Supervisors approved the DDA by Resolution
9 No. 42-18, and approved the Development Agreement for the Project by Ordinance
10 No. 33-18.

11 (c) The Developer, with a Developer affiliate, Mission Rock Horizontal Sub (Phase 1),
12 L.L.C., a Delaware Limited Liability Company, has constructed certain "Horizontal
13 Improvements" including: installation of utilities such as auxiliary water supply mains, low-
14 pressure water mains, combined sewer mains, combined sewer storage, non-potable water
15 mains, electricity and gas infrastructure, private utility systems, surface improvements along
16 Third Street, Bridgeview Way, Dr. Maya Angelou Way, Toni Stone Crossing, surface
17 improvements within Port open spaces (Bridgeview Paseo, Dr. Maya Angelou Paseo, a
18 portion of the future Mission Rock Square), and surface and subsurface improvements to
19 China Basin Park and the China Basin Park Promenade.

20 (d) The Horizontal Improvements built to City standards will be owned, maintained,
21 and permitted by the City (Public Works, Municipal Transportation Agency, Public Utilities
22 Commission, Department of Technology) ("City Acceptance Items"). Non-standard
23 improvements built within the City-accepted rights-of-way will be owned by the Port ("Port
24 Encroachments"), as described in an Interagency Master Encroachment Permit ("IMEP").
25 Improvements built within Port open space will also be owned by the Port ("Port Open Space

Assets"). Port Encroachments and Port Open Space Assets are collectively referred to as "Port Assets." Once the acceptance process is complete, the Port will release the Port Assets and City Acceptance Items from the Master Lease premises, which ownership framework is memorialized in the jurisdictional memorandum of understanding among City departments and in the DDA.

(e) Port and Developer have negotiated the China Basin Park Lease and Loan Agreement (the "Park Lease and Loan"), through which Port would (1) provide a zero-rent lease of China Basin Park to a new Developer affiliate, which has not yet been formed but is anticipated to be named "Mission Rock Commons," for management, maintenance, activation, and programming for public park purposes for a term of 15 years, plus three options for Mission Rock Commons to extend for five years each for a total potential term of 30 years; (2) include certain indemnities benefiting the Port and City; and (3) subject to appropriation by the Port Commission and Board of Supervisors, provide a zero interest loan of up to \$800,000 over three years for baseline maintenance and operations purposes, subject to repayment prior to the conclusion of the initial term, as described in the memorandum to the Port Commission dated February 7, 2025. The Park Lease and Loan contemplates certain delegations of authority by the Port Commission to the Port Executive Director for certain administrative functions, including the abilities to (A) revise the China Basin Park leased premises to facilitate construction of future park improvements; (B) approve certain sponsorship agreements that do not exceed 10 years; and (C) approve future annual budgets that fall within a permitted variance of the prior year's Budget, all without seeking additional Port Commission approval and each as more particularly described in the Park Lease and Loan.

A copy of the Park Lease and Loan is on file with the Clerk of the Board of Supervisors in File No. 250189.

1 (f) Port and Developer have negotiated the Mission Rock Paseos and Open Space
2 Management Agreement ("Management Agreement"), requiring Mission Rock Commons (or
3 another Developer affiliate to be formed) to maintain and operate: (1) the Port paseos in the
4 Project area as public open space; (2) Port Assets subject to and in accordance with
5 conditions included in the IMEP; (3) other Port Assets in the Project area; and to assist Port
6 with any associated claim, while the Port retains full control of this property as public space
7 funded with tax-exempt bond proceeds in accordance with Internal Revenue Service ("IRS")
8 laws and regulations; for a term of 15 years plus three Port options to extend for five years
9 each for a total potential term of 30 years, as described in the memorandum to the Port
10 Commission dated February 7, 2025.

11 A copy of the Management Agreement is on file with the Clerk of the Board of
12 Supervisors in File No. 250189.

13 (g) Port and Pacific Gas and Electric Company ("PG&E") have negotiated the following
14 license agreements: (1) one no-fee license agreement allowing PG&E to enter Port property
15 to operate and maintain gas pipelines located in Port open space that serve buildings on Lot 3
16 and Lot 4 of the Project; and (2) one no-fee license agreement allowing PG&E to enter Port
17 property to operate and maintain an electric line located in China Basin Park to serve the
18 Third Street Bridge "Pilot House," each for a term of 66 years subject to approval by the Board
19 of Supervisors, and each protecting the Port and City from certain liability related to PG&E's
20 utility infrastructure and activities ("PG&E Licenses"). For the PG&E electric line license,
21 PG&E requires an Absolving Services Agreement ("ASA") that acknowledges the expiration or
22 termination of the electric line license may result in electric power service termination to the
23 Pilot House and in which the Port and City expressly indemnify PG&E from liability, claims,
24 and damages connected with such discontinuance of service.

1 A copy of the PG&E Licenses and ASA are on file with the Clerk of the Board of
2 Supervisors in File No. 250189.

3 (h) Port and Mission Rock Utilities, Inc., a Delaware corporation ("MRU") that will own
4 and operate district utilities, have negotiated a no-fee license agreement ("MRU License") to
5 enter Port property to operate and maintain private utilities including district heating and
6 cooling, recycled water treatment and distribution, and sanitary sewers while protecting the
7 Port and City from certain liability related to MRU's utility infrastructure and activities, which
8 license requires approval by the Board of Supervisors.

9 A copy of the MRU License is on file with the Clerk of the Board of Supervisors in File
10 No. 250189.

11 (i) At its meeting on February 11, 2025, the Port Commission adopted Resolution
12 No. 25-06 approving the Park Lease and Loan, the Management Agreement, the MRU
13 License, and the PG&E Licenses and the Absolving Services Agreement and authorized the
14 Port Executive Director to seek Board of Supervisors authorization to waive any applicable
15 competitive bidding policies.

16
17 Section 2. Environmental and Land Use Findings.

18 (a) In a letter dated February 6, 2025 ("Planning Department Letter"), the Planning
19 Department determined that the actions contemplated in this ordinance comply with the
20 California Environmental Quality Act (California Public Resources Code Sections 21000 et
21 seq.) and do not trigger the need for subsequent environmental review. Said determination is
22 on file with the Clerk of the Board of Supervisors in File No. 250189 and is incorporated herein
23 by reference.

1 (b) In the same letter, the Planning Department determined that the actions
2 contemplated in this ordinance are consistent, on balance, with the City's General Plan and
3 eight priority policies of Planning Code Section 101.1.

4 (c) The Board adopts as its own the environmental findings and the General Plan and
5 Planning Code Section 101.1 consistency findings in the Planning Department Letter.
6

7 Section 3. The Board of Supervisors approves the Park Lease and Loan without
8 adhering to the requirements of Administrative Code Sections 2.6-1 and 23.33, or any other
9 applicable competitive procurement requirement, and authorizes the Executive Director of the
10 Port or the Executive Director's designee to execute the Park Lease and Loan in substantially
11 the form on file with the Clerk of the Board of Supervisors.
12

13 Section 4. The Board of Supervisors approves the Management Agreement without
14 adhering to the requirements of Administrative Code Section 21.1, or any other applicable
15 competitive procurement requirement, and authorizes the Executive Director of the Port or the
16 Executive Director's designee to execute the Management Agreement in substantially the
17 form on file with the Clerk of the Board of Supervisors.
18

19 Section 5. The Board of Supervisors approves the MRU License, and the PG&E
20 Licenses and Absolving Services Agreement and authorizes the Executive Director of the Port
21 or the Executive Director's designee to execute the MRU License, and the PG&E Licenses
22 and Absolving Services Agreement in substantially the forms on file with the Clerk of the
23 Board of Supervisors.
24
25

1 Section 6. The Board of Supervisors authorizes the Executive Director of the Port to
2 enter into any additions, amendments, or other modifications to the Park Lease and Loan, the
3 Management Agreement, the MRU License, and/or the PG&E Licenses and Absolving
4 Services Agreement that the Executive Director, in consultation with the City Attorney,
5 determines, when taken as a whole, to be in the best interest of the Port, do not materially
6 increase the obligations or liabilities of the City or the Port, and are necessary or advisable to
7 complete the transactions which this ordinance contemplates and effectuate the purpose and
8 intent of this ordinance, such determination to be conclusively evidenced by the execution and
9 delivery by the Executive Director of such documents.

10
11 Section 7. Within 30 days of the full and final execution by all parties of the Park Lease
12 and Loan, the Management Agreement, the MRU License, and the PG&E Licenses and
13 Absolving Services Agreement, the Port shall provide a copy of each document to the Clerk of
14 the Board for inclusion into the official file.

15
16 Section 8. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance.

20
21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/
24 JUSTIN BIGELOW
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Port Park Lease and Loan, Management Agreement, and Utilities Licenses and Absolving Services Agreement - Mission Rock]

Ordinance approving and waiving competitive solicitation obligations for a Port Commission Park Lease and Loan for China Basin Park and for a Management Agreement for adjacent public and open spaces between the Port and an affiliate of Seawall Lot 337 Associates, LLC, Developer of the Mission Rock Project bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay (“Project”); approving a Port Commission License with Mission Rock Utilities, Inc., a private utility provider servicing the Project; and approving two Port Commission Licenses and an Absolving Services Agreement with Pacific Gas and Electric Company to facilitate gas service to private property in the Project area and electric power service to the Third Street Bridge Pilot House; and affirming the Planning Department’s determination under the California Environmental Quality Act, and its findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Charter Section 9.118 requires approval by the Board of Supervisors of contracts or agreements having a term in excess of ten years.

Administrative Code Sections 2.6-1, 21.1, and 23.33 require competitive procurement processes for leases and certain agreements.

Amendments to Current Law

The Ordinance does not amend existing law. The ordinance waives competitive procurement obligations and approves various property agreements between the Port of San Francisco (“Port”) and other parties as summarized: the China Basin Park Lease and Loan Agreement between Port and a Developer (defined below) affiliate that will operate, maintain, and program the park as public open space for up to 30 years; the Mission Rock Paseos and Open Space Management Agreement between Port and a Developer affiliate that will operate and maintain public assets and public open space within the Mission Rock development for up to 30 years; two licenses for up to 66 years between Port and Pacific Gas and Electric Company, which will operate and maintain gas pipelines serving buildings in the Project area and an electric line that serves the Third Street Bridge “Pilot House” and regarding which the Port and City will enter an Absolving Services Agreement addressing service disruption if the electric line license is terminated; and, a 66 year license between Port and Mission Rock Utilities, Inc., which operates private utilities including district heating and cooling, recycled water treatment and distribution, and sanitary sewers serving the Project area.

Background Information

An existing Disposition and Development Agreement (“DDA”) and Development Agreement (“DA”) between Port and Seawall Lot 337 Associates, LLC (“Developer”) and Developer’s affiliate approve and govern the development of the Mission Rock “Project,” a multi-phase, mixed-use development generally bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay.

The legislation accompanies acceptance legislation regarding Developer’s completion of Phase 1 of the Project and the proposed dedication to and acceptance by Port and City of public improvements. At its meeting on February 11, 2025, the Port Commission adopted Resolution 25-06 approving the agreements subject to approval by the Board of Supervisors.

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Item 5 File 25-0189	Department: Port Commission (PRT)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed ordinance seeks to waive competitive solicitation requirements and approve a lease and loan agreement for China Basin Park and a management agreement for the adjacent non-park open space within the Phase 1 footprint of the Mission Rock development project between the Port and an affiliate of Seawall Lot 337 Associates, LLC. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> The China Basin Park Lease and Loan Agreement leases the park to Mission Rock Commons. The initial term is 15 years with three optional five-year extensions. While the Port receives no rent, Mission Rock Commons is expected to assume operating, maintenance, and programming costs for China Basin Park and the adjacent open spaces. The Paseos and Open Space Management Agreement (“Management Agreement”) governs the maintenance and operation of all other Port-owned assets and open spaces in the Mission Rock area, including paseos, berms, and non-standard City right-of-way improvements. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> Revenues to cover park expenses will primarily come from the special tax-equivalent fees from the Mission Rock Owners Association and from concessions, events, sponsorships, and programming. Any net revenues from the park will be used to fund maintenance reserves and park development costs. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> The proposed ordinance waives competitive bidding requirements for the proposed agreements. The Port seeks to contract directly with the Developer’s affiliate for efficiency, as it already manages and disburses Mission Rock Owners’ Association dues. However, without a competitive process, it's unclear whether other vendors could maintain the park or generate revenue more effectively. To support early operations, the Port will provide an interest-free loan of up to \$800,000 over three years, funded by the Recreation and Parks Department, for maintenance and start-up costs, which must be paid in full before the initial lease term ends. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> Request an update from the Port on whether the proposed loan can be funded by the Port’s non-General Fund revenues. Approval of the proposed ordinance is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease, modification, amendment, or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

Administrative Code Sections 2.6-1, 21.1, and 23.33 outline competitive solicitation requirements that apply to Port leases and management agreements.

BACKGROUND**Mission Rock Development Project**

Mission Rock is a 28-acre site bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay that is being developed by Seawall Lot 337 Associates, LLC (the Developer), a joint venture of the San Francisco Giants and Tishman Speyer. At completion, the project will consist of 1,100 units of housing, up to 1.4 million square feet of office space, retail space, and parks and open space.

Project Agreements

The Mission Rock development project is governed by a Disposition and Development Agreement (DDA) and a Master Lease, and their related agreements. In February 2018, the Board of Supervisors approved the DDA between the Port and Seawall Lot 337 Associates, LLC (File 18-0092). The DDA requires Seawall Lot 337 Associates, LLC to obtain project entitlements and construct horizontal and vertical improvements within the Mission Rock Project Area and the Port to reimburse the developer for certain infrastructure costs.

As authorized by the approval of the DDA, the Port Executive Director executed the Master Lease between the Port and the Developer in August 2018. The Master Lease is a form that sets forth the terms and conditions under which the Port will lease most of the Mission Rock site to the developer when it is ready to begin constructing horizontal improvements. Individual development parcels will be removed from the Master Lease once horizontal improvements are completed, as they are leased to vertical developers, and parks and streets are removed from the Master Lease once they are accepted by the City.

Financing Plan

To finance Phase 1 horizontal infrastructure costs, the Port intends to use pre-payment on ground leases, tax-increment financing,¹ and special taxes. Horizontal infrastructure includes

¹ The Board of Supervisors formed the Port Infrastructure Financing District 2 (Port IFD) in March 2016 (File 13-0264). The Port IFD includes eight project areas which are eligible to receive property tax increment revenues, each of which is subject to Board of Supervisors' approval. In February 2018, the Board of Supervisors established Project Area I (Mission Rock) and Sub-Project Areas I-1 through I-13 within the Port's Infrastructure Financing District 2 (File 17-1314), approved the Infrastructure Financing Plan for that Project Area (File 17-1314), and approved the issuance

entitlements, demolition, raising the site to protect against sea level rise, hazardous soil removal, wet and dry utilities, earthwork and retaining walls, roadways and street utilities, as well as public open space, including China Basin Park.

Special Tax District and Mission Rock Owners Association Payment in Lieu of Tax

In April 2020, the Board of Supervisors approved the establishment of the San Francisco Special Tax District No. 2020-1 (Mission Rock Facilities and Services) (File 20-0120) as permitted under State law.² The purpose of the CFD is to limit developer capital in the Mission Rock project funding structure by allowing the Port to levy special taxes, issue bonds, and fund project costs throughout development and for perpetual maintenance of parks, open space, streets, sidewalks, and other infrastructure. The Board of Supervisors has also approved special taxes³ to be levied in the district and the sale and issuance of up to \$3.7 billion in special tax bonds for infrastructure improvements (Files 20-0125 and 20-0124).

However, the Mission Rock Owners' Association is expected to collect fees from commercial tenants in lieu of the Port levying the special taxes. These dues are in the amount of the equivalent tax rate established by the CFD and will allow for the direct transfer of funds from tenants to the Developer to be used for operations and maintenance on a monthly basis. The fees are set at the maximum allowable rate under the CFD.

Current Project Status

The Mission Rock Project is to be completed in four development phases to incrementally build out infrastructure and amenities available for use, per the DDA. As of February 2025, Phase 1 of the development is nearly complete. There is no anticipated start date for Phase 2.

Phase 1 Status

Phase 1 includes four Blocks: A, B, F, & G. Streets, utilities, and public open spaces have opened to the public under the Master Lease and four buildings consisting of two multi-family residential buildings (Parcels A & F) and two commercial office buildings (Parcels B & G) have received either a Certificate of Final Completion and Occupancy or a Temporary Certificate of Occupancy. Residents began moving into one of the residential buildings (Parcel A) in June 2023, and Parcel F move-ins began in Summer 2024. In addition, ground floor storefronts have been leased to

of up to \$1.378 billion tax increment bonds to finance construction of infrastructure within each Project Sub-Area (File 17-1315).

² Under California State law, Mello-Roos Community Facilities Districts (CFDs) are a special tax district formed when property owners within a geographic area agree to impose a tax on property to fund infrastructure improvements or services.

³ Four types of taxes exist under the Mission Rock CFD: (1) Development tax to fund infrastructure and parks with 40 years of bonding authority; (2) Shoreline tax to fund shoreline protection studies and facilities for 120 years; (3) Office tax to fund infrastructure and parks more flexibly than the development tax; and (4) Services tax to fund ongoing operations and maintenance for the site that exists in perpetuity.

retail tenants, including Ike's Sandwiches, Proper Foods, Flour + Water Pizza, LuxeFit gym, and Ariscault Bakery.

Completion of Phase 1 is three years behind schedule based on the target completion date of February 2022 in the DDA Schedule of Performance. According to Port staff, delays are due to several factors, including delays in obtaining a key horizontal permit (the Street Improvement Permit), complexity of sequencing as vertical construction on all four parcels was done concurrently as horizontal construction was also proceeding, construction of complex district sustainability features (such as the blackwater treatment plant and energy system), supply chain issues due to the COVID-19 pandemic, and unforeseen conditions related to underground utilities, soils, and dewatering.

Phase 1 Budget

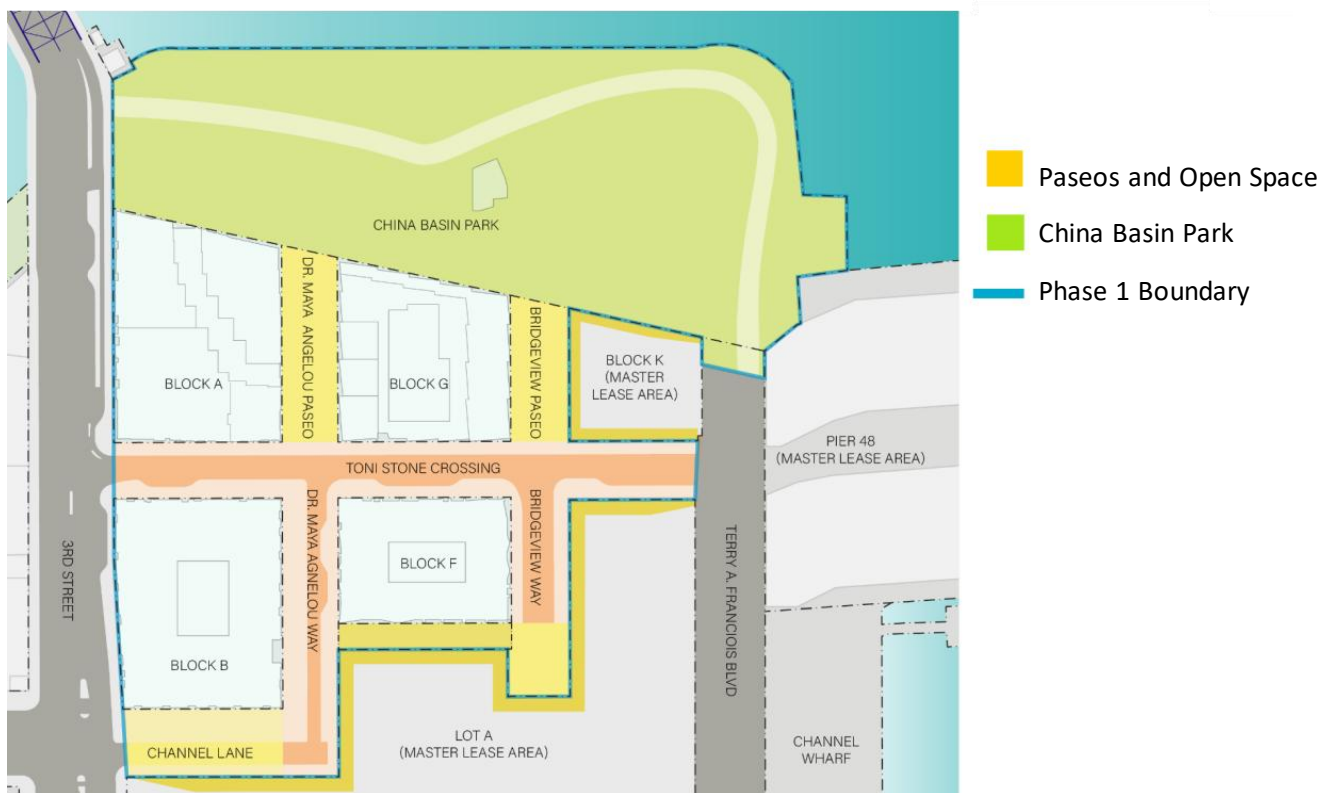
The Phase 1 horizontal infrastructure construction budget has increased from \$145.4 million in 2019 to \$218.5 million as of October 2023, an increase of \$73.1 million or (50 percent). Increases are due to the complexity of project sequencing, unforeseen conditions described above, unanticipated security improvements and reinforcement of concrete in China Basin Park (including moving China Basin Park into Phase 1), inflation, sea-level rise protection, and design features (such as non-standard finishes and hardscapes plus the infrastructure associated with the district sustainability systems) that required additional Developer and City staff costs to implement the project.

Phase 1 Acceptance of Improvements

The Port Commission passed resolutions in February 2025 to formally assume and delegate ownership of continued maintenance and operations obligations to an affiliate of the Developer. The Commission further approved recommendations that the Board of Supervisors approve the land use agreements necessary to finalize the Phase 1 acceptance process.

Premises

The premises outlined in the Port Commission's proposed land use agreements include China Basin Park and the paseos and open space, illustrated in Exhibit 1 below.

Exhibit 1: Phase 1 Premises

Source: Port Commission

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would take the following actions:

1. Waive competitive solicitation requirements for and approve a Port Commission Park Lease and Loan for China Basin Park and a Management Agreement for adjacent public and open spaces within the premises of the Mission Rock Project;
2. Approve a Port Commission License with Mission Rock Utilities;
3. Approve two Port Commission Licenses and an Absolving Services Agreement with Pacific Gas and Electric (PG&E); and
4. Affirm the Planning Department's determination under the California Environmental Quality Act and its findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1.

Competitive Solicitation Waivers

The proposed legislation seeks approval from the Board of Supervisors to waive any applicable competitive bidding requirements for the proposed Park Lease and Management Agreement. The Port anticipates the proposed agreements to be executed with Mission Rock Commons, a

Developer affiliate that has not yet been formed. If approved, the ordinance would specifically relieve the Port of any obligations under City Administrative Codes 2.6-1, 21.1, and 23.33, or any other applicable procurement requirement, described in detail in Exhibit 2 below.

Exhibit 2: Charter Exemptions Requested Under Proposed Ordinance

Administrative Code	Obligation	Document
Section 2.6-1	Departments must only approve lease agreements with entities that have proven to be the highest responsible bidder in accordance with competitive bidding procedures, except in cases where the Board of Supervisors finds that the bidding procedures are impractical or impossible.	Lease and Loan agreement
Section 23.33	Leases that are expected to produce more than \$2,500 per month in revenue must be awarded in accordance with competitive bidding procedures, unless such procedures are impractical or impossible. Leases that are awarded without adherence to competitive bidding procedures must be in an amount equal to at least the fair market value of the property, unless the lease serves a public purpose.	Lease and Loan agreement
Section 21.1	All City contracts for commodities or services shall be procured through competitive solicitation.	Management agreement

Source: San Francisco Administrative Code

Per the February 2025 Port Commission resolution, the Port is seeking to waive solicitation requirements because of the proposed funding structure. Specifically, because the primary source for the operating and maintenance costs of China Basin Park and Port assets will come from the Mission Rock Owner's Association dues, Seawall Associates 337, LLC affiliate is uniquely positioned to operate, maintain, and program the premises due to their direct financial relationship with Mission Rock Owners Association. According to Port staff, because of the high degree of activation required for the premises to generate revenue, this direct relationship will be more cost-effective than establishing a new partnership with an external management entity.

China Basin Park Lease and Loan Agreement

The proposed ordinance would approve a new lease agreement between the San Francisco Port Commission and Mission Rock Commons at the premises of China Basin Park for an initial term of 15 years with three five-year options to extend for a maximum term of 30 years. The lease does not require Mission Rock Commons to pay a security deposit, nor does it require payment of base rent. Instead, the lease assigns full responsibility for operations, maintenance, and programming of the premises to Mission Rock Commons.

Key Lease Terms

Under the terms of the lease, Mission Rock Commons is required to use the premises as a public park and open space. The permitted uses include but are not limited to event programming, retail concessions, recreational activities such as walking, bicycling, and picnicking, as well as passive activities like viewing and fishing. Any use beyond these permitted activities requires prior

written approval from the Port, which may be granted or denied at its discretion. Additionally, Mission Rock Commons is required to submit a programming calendar on a monthly basis outlining planned events for the upcoming 14 months while also providing updates on actual events from the previous month.

Mission Rock Commons assumes full responsibility for maintaining the premises at a standard comparable to first-class public waterfront parks in California. This includes routine maintenance, capital repairs and replacements, and ensuring compliance with all applicable laws and regulations. Any improvements or alterations must be approved by the Port. In the case of damage due to fire, natural disasters, or other casualties, Mission Rock Commons is responsible for necessary repairs. The lease specifies that the Port has the right to inspect the premises and may require Mission Rock Commons to undertake maintenance or repairs if the property is not being adequately maintained. If Mission Rock Commons fails to address maintenance concerns, the Port has the right to conduct necessary repairs at the tenant's expense.

Mission Rock Commons is required to submit a quarterly report to the Port detailing actual operating expenses, revenues, and any changes to the budget. Additionally, an annual report must be submitted by April 1 of each year, summarizing park operations, financial performance, and compliance with the lease agreement.

Loan Option

In the event that park revenues are insufficient to cover operating expenses in the initial years of the lease, Mission Rock Commons may request a loan from the Port Commission, with funds provided by Recreation and Parks General Fund, to cover an anticipated operating deficit. This loan option is only available within the first three years of the lease term and only covers park maintenance, not park events. Loan requests must be accompanied by detailed financial statements and are subject to Port Commission review and approval. The maximum loan amount is capped at \$800,000, with an annual draw limit of \$300,000. The loan is interest-free and must be repaid by the end of the initial 15-year term of the lease. Any excess loan proceeds that are not required for operating expenses must be returned to the Port.

The loan provision was not included in the DDA or previous legislative packages brought to the Board of Supervisors. According to Port staff, the loan proved to be necessary as the Department and the developer began discussing management terms. The Port reports there was a funding gap in the first years of the budget due to inflation and costs associated with the park's use of recycled black water⁴ and the overall delay of the Mission Rock project and associated availability of maintenance revenues. Port staff project for this gap to be closed within three years, due to the developer being able to facilitate revenue-generating programming that is not currently permitted under the Master Lease.

⁴ The Mission Rock development project intends to avoid using any potable water for non-potable purposes. The black water (wastewater) recycling system will be used for irrigation, flushing, etc. throughout Mission Rock's footprint.

Annual Revenue Allocation

Gross revenue generated from China Basin Park (except donations and capital improvement sponsorships) is to be allocated in the following order:

1. Operating and capital expenses.
2. Operating Reserve Account provided that the annual deposit may not exceed: (a) \$100,000 if there is a Port loan outstanding, or (b) the lesser of \$200,000 or 20 percent of operating and capital expenses; and the total amount in the reserve account may not exceed: (a) \$100,000 if there is a Port loan outstanding, or (b) \$600,000 if there is no Port loan outstanding.
3. Repayment for any outstanding Port loan (if drawn by the tenant and not repaid).
4. Maintenance Reserve Account provided that total amount in the reserve account may not exceed the capital needs amount.
5. Mission Rock Long Term Reserve Fund⁵ provided the total amount in the reserve fund does not exceed the aggregate amount in the Operating Reserve Account and the Maintenance Reserve Account.
6. Finally, any remaining amounts (once the reserve accounts and funds are fully funded as described above) are to be split 50 percent to the Mission Rock Long Term Reserve Fund and 50 percent to repay horizontal development costs for the project.

Paseos and Open Space Management Agreement

At the same time as the Park Lease and Loan Agreement, the proposed ordinance would approve a qualified management agreement⁶ designating Mission Rock Commons or another Developer affiliate to operate and maintain the open space within the Mission Rock Phase 1 premises, as shown in yellow in Exhibit 1 above. The term for the proposed agreement would also be for 15 years with three five-year extension options that the Port may exercise for a maximum term of 30 years.

Management Fee, Cost Reimbursement, and Port Contribution

In exchange for the value of maintaining the premises, the Port is to pay an annual management fee to Mission Rock Commons of \$10,000. This amount is to be adjusted annually according to

⁵ The Mission Rock Long Term Reserve Fund are to be used to fund repairs of unanticipated damage, capital repairs and replacements, remediation, compliance improvements, and events related to the Tenant's DEI Plan.

⁶ Qualified management contracts feature facilities financed with proceeds from tax-exempt bonds in accordance with Internal Revenue Service (IRS) procedure 2017-13. The management agreement, being a qualified management contract, identifies limitations on private uses within the premises that Mission Rock Commons must adhere to. Permitted uses for private businesses will be in accordance with IRS standards and must require private use agreements that are approved by the Port. Any other use of the premises other than standard public access must have the express written approval of the Port Commission.

CPI and lessened proportionally with increased operating revenues (from the leasing or licensing of a portion of the premises) or contributions from the Master Association.

Mission Rock Commons is entitled to reimbursement for “reasonable costs expended in accordance with the budget” and is to be reimbursed first from Master Association Contributions, second from the Port if the Contingent Services Special Tax is levied, and third “as may be directed by Port” in its discretion. The Port, at its discretion, may also contribute funding to support operations or programming of the premises. Port staff indicated they do not anticipate making contributions towards paseo or park maintenance (beyond the loan) and that the clauses regarding financial support were to give the Port flexibility to make improvements to the premises without retaining or management responsibilities. The ultimate liability of the land under the Management Agreement will stay with Port to meet the IRS rules for the qualified management agreement.

Other Key Terms

Mission Rock Commons is required under the proposed management agreement to assume the responsibilities and obligations that the Port is contractually obligated to meet, outlined below.

1. **Memorandum of Understanding Regarding Jurisdiction, Acceptance, and Maintenance of Public Improvements at the Mission Rock Special Use District:** MOU outlines the ownership framework for City acceptance items and Port Assets, which include open space assets and non-standard assets in the City Rights of Way. Mission Rock Commons will be responsible for the Port’s obligations under the MOU to maintain, operate, manage, and report on these assets.
2. **Interdepartmental Master Encroachment Permit (IMEP):** Permit issued to Port from Public Works for all Port-owned, non-standard assets in the City Rights of Way. The assets listed include tree grates, signage, public art installations, waste receptacles, and other surface developments. Mission Rock Commons must assume liability and maintenance requirements outlined in the Permit.

Additional obligations required by the management agreement include routine maintenance, capital repairs, and ensuring compliance with all applicable laws. Mission Rock Commons must maintain the open spaces in accordance with the same cleanliness standards required by any other City-owned open space.

Finally, the management agreement requires Mission Rock Commons to submit a report to the Port Commission on a quarterly basis detailing actual expenses and updates to the proposed budget and private use agreements. Prior to April 1 of each year, Mission Rock Commons must also deliver an annual report for the previous calendar year inclusive of a narrative on Park operations, separate line items for operating and capital expenses, a summary of private use agreements, a premises evaluation report of the premises’ conditions, copies of all private use agreements, and the amount of any budget surplus or deficit.

Utilities Licensing

The proposed legislation also approves license agreements that allow PG&E and Mission Rock Utilities to operate and maintain utilities located on Port property. All licenses and agreements are for a term of 66 years⁷ with no associated fees. The four agreements include:

1. A license with PG&E that establishes access rights to PG&E for the maintenance and repair of two gas lines located in Port open space.
2. A license with PG&E that establishes access rights to PG&E for an electric line through China Basin Park.
3. An absolving services agreement, which is required by PG&E, that acknowledges that PG&E may discontinue electric service if the electric license is terminated and absolves PG&E from liability related to such service discontinuance.
4. A license with Mission Rock Utilities that grants access rights to Mission Rock Utilities to operate and maintain lines for the Mission Rock District Energy System and Blackwater Recycling System infrastructure for all of Mission Rock, including Port-owned parks and open space.

Concurrent Legislation

The developing project at Mission Rock is awaiting Board approval for five additional legislative items:

- File 25-0188 is a proposed ordinance granting a revocable master encroachment permit allowing Mission Rock Utilities to maintain privately-owned utility systems beneath the public right-of-way.
- File 25-0186 is a proposed ordinance to accept and dedicate certain public infrastructure improvements associated with Phase 1A of the Mission Rock Project.
- File 25-0285 is a proposed resolution to grant the Port revocable permission to maintain certain encroachments in the public right of way under the Interdepartmental Master Encroachment Permit.
- File 25-0264 is a proposed resolution to amend the Mission Rock Housing Plan to reduce the minimum percentage of inclusionary affordable housing units per phase of the Mission Rock Project.⁸
- File 25-0188 is a proposed ordinance to assign certain retail permitting from Public Works to Port for spaces in Mission Rock, Pier 70, and Potrero Power Station.

⁷ California regulations prohibit the Port from issuing land rights to entities other than PG&E for a term longer than 66 years.

⁸ Port staff reported that this item is unrelated to the acceptance process.

FISCAL IMPACT**Change in Port Obligations**

Under the proposed lease agreement and management agreement, the financial obligations of the Port under the agreements include:

- The Port must pay the **management fee** to the Developer affiliate under the proposed management agreement in the amount of \$10,000 annually, adjusted for inflation. The management fee must be offset by earned revenue from leasing, licensing, or private use of the premises. If these contributions and the Master Association fees equal or exceed the management fee, the Port would have no payment obligation. After the third year of the term, the Port and Mission Rock Commons will meet to evaluate and discuss funding sources for costs associated with maintenance and operation of open spaces.
- The Port may issue a zero-interest **loan** in the amount of up to \$300,000 annually for the first three years of Mission Rock Commons assuming ownership of China Basin Park, up to \$800,000 total, in the event revenues cannot pay for Mission Rock's operating expenses. The loan cannot be used to cover expenses incurred through programming, marketing, or sponsorship solicitation. The loan funds will be provided to Port by Recreation and Parks (REC). According to REC staff, there will be a separate work order agreement to provide these funds on loan with interest.

The Port may additionally issue **discretionary support** for reasonable expenses for programming or operations of the park, paseos and open space at its sole discretion under the proposed Management Agreement. Any such contribution comes with terms and conditions that Mission Rock Commons must agree to before accepting.

The estimated sources and uses of funds for China Basin Park and Open Spaces for the initial year of the proposed agreements are shown in Exhibit 3 below.

Exhibit 3: Sources and Uses of China Basin Park and Open Spaces

	China Basin Park	Non-Park Open Spaces	Total
General Operations			
Sources			
Special Tax Equivalent*	\$1,116,770	\$372,257	\$1,489,027
Additional Assumed Revenue	10,000	3,000	\$13,000
Total Sources	1,126,770	375,257	\$1,502,027
Uses			
Facilities & Maintenance	325,020	101,640	\$426,660
Custodial	226,159	75,386	\$301,545
Utilities/Other	731,394	240,465	\$971,859
Total Uses	1,282,573	417,491	\$1,700,064
Net Deficit	(155,803)	(42,234)	(\$198,037)
Programming & Sponsorships			
Sources			
Concessions	53,000		\$53,000
Sponsorships	150,000		\$150,000
Event Usage	177,000		\$177,000
Total Sources	380,000		\$380,000
Uses			
Programming	472,500		\$472,500
Sponsorships	27,000		\$27,000
Marketing	47,000		\$47,000
Total Uses	546,500		\$546,500
Net Deficit	(166,500)		(\$166,500)
Net Total Operating Deficit (incl Programming)			
	(\$322,304)	(\$42,234)	(\$364,538)

Source: Port

*Per each of the agreements, 75 percent of dues are to be assigned to China Basin Park while 25 percent shall be reserved for the operating funds for the open spaces management agreement.

General Operations

For the first year of assumed responsibility, expected revenues for China Basin Park and the open spaces premises total \$1.1 million and \$375,257, respectively. The primary source of revenue for both areas is the special tax equivalent paid by the Mission Rock Owners' Association, designed to match the amount that a special services tax would generate if fully levied. Additional assumed revenue is anticipated to be licensing fees received from restaurant retailers. Estimated operating expenses are driven by ongoing maintenance and repairs, day cleaning inclusive of restroom maintenance and waste management, water and sewer expenses. Expenses are

expected to exceed revenues, with China Basin Park and Open Spaces experiencing a deficit of \$155,803 and \$42,234, respectively.

Programming & Sponsorships

The Port Commission and Developer anticipate that programming and sponsorships incurred by China Basin Park within the first year of operations will include an estimated \$380,000 in revenue from concession agreements, corporate sponsorships, and event fees. Expenses related to overseeing programming, however, are anticipated to total \$546,500 and operate at a deficit of \$166,500 when Mission Rock Commons first assumes ownership. The majority of the estimated programming expenses are from 2.75 full-time equivalent (FTE) staff performing outreach, marketing, communications, and event planning. Inclusive of programming, the expected deficit of China Basin Park for the first year of affiliate ownership totals \$322,304.

Licenses

There are no fees associated with the absorption of PGE services and the creation of MRU.

POLICY CONSIDERATION

Joint Approval Necessary

The approval of the Mission Rock Utilities license is contingent upon the approval of the pending resolution to grant a revocable encroachment permit to Mission Rock Utilities, Inc. (File 25-0188).

Competitive Bidding Requirements Waivers

The proposed ordinance waives competitive bidding and solicitation requirements for the proposed Park Lease and Loan Agreement and the Management Agreement. The DDA did not contemplate that the Developer or an affiliate would be responsible for maintaining Port-owned open space following project completion, just that a revenue source would be available to fund park maintenance. The Port is seeking to waive competitive solicitation requirements and enter into agreements with an affiliate of the Developer because of the cost efficiency gained by the same entity managing and dispersing the Mission Rock Owner's Association dues revenue, according to Port staff. Absent a competitive procurement, we do not know if other vendors could maintain the park and generate revenue more effectively.

Loan and Projected China Basin Park Deficit

According to Port staff, the Port proposes to provide a loan of up to \$800,000 to the developer affiliate because of projected revenue gaps due to inflation and underestimated costs associated with the black water recycling system. In addition, the Port is proposing that the loan will be a zero-interest loan because all revenue earned within the Mission Rock development site is to stay within the project, including paying down horizontal development costs for which the Port needs to reimburse the developer. Consequently, the Port offered the zero-interest term to avoid taking money away from funds that would otherwise go towards China Basin Park operations. However, funding for the Port loan will be provided to Port from REC using General Fund operational maintenance dollars. Port was not able to verify why Port funds would not be able

to finance the proposed loan. While REC expects to receive interest from the Port during its repayment period, this loan will effectively reduce available funds for the San Francisco park system by up to \$300,000 in each of the next two years and \$200,000 in the third year for a park located on Port property. This funding reduction will be especially impactful to REC given the Mayor's 15 percent instructed cuts to General Fund operating budgets in the next two fiscal years. The Port should report to the Budget & Finance Committee whether it can use its own non-General Fund revenues to fund the proposed loan.

China Basin Park is the largest public asset delivered by the Mission Rock project, and at full project buildout, special tax revenue (or in-lieu fees) generated from Phases 1 through 4 are sized to support park operations. The Port anticipates that the park will operate at an annual deficit of more than \$150,000 in the initial year of operation because the park will only be supported by special tax revenue from Phase 1 and because it may take time to ramp up revenue generating events. However, the remaining development Phases are on hold and the Port has not offered documentation of the Developer's plan to generate revenue in the park. Most public parks are not self-sustaining and need outside revenue to fund maintenance expenses. As the agreements are written, the Port and REC are assuming financial liability without a mechanism to recover funds if special tax equivalent revenues remain insufficient and increased programming is not viable. According to the Port, if the park is not financially self-sufficient within three years, the park's operating budget could be reduced.

RECOMMENDATIONS

1. Request an update from the Port on whether the proposed loan can be funded by the Port's non-General Fund revenues.
2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



**CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR**

**LEASE No. L-XXXX
AND
LOAN AGREEMENT**

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

[INSERT NAME OF TENANT]

CHINA BASIN PARK

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE-PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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BASIC LEASE INFORMATION

<i>Lease Date (for reference purposes only):</i>	[REDACTED], 2025
<i>Landlord:</i>	The CITY AND COUNTY OF SAN FRANCISCO , operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Tenant:</i>	[REDACTED]
<i>Notice Address for Tenant:</i>	[REDACTED]
<i>Tenant Agent for Service of Process:</i>	
<i>Notice Address for Port:</i>	Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111 Attention: Deputy Director of Real Estate and Development
<i>With a copy to:</i>	Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111 Attention: General Counsel
<i>Key Contact for Port:</i>	Assistant Deputy Director of Development (415) 274-0621
<i>Property and Location:</i>	<p>As of the Commencement Date, the Premises shall consist of China Basin Park, as more particularly described on the attached <i>Exhibit A-1</i> and as depicted on the attached <i>Exhibit A-2</i>, including all Improvements thereon (collectively, the “Premises”).</p> <p>The term “Premises” refers to the property that is subject to this Lease from time to time, as may be adjusted as provided in <i>Section 2.2</i>, and will include all Improvements and Subsequent Horizontal Construction as and when constructed thereon.</p>
<i>Development Project</i>	Mission Rock Development at SWL 337 and Pier 48
<i>Commencement Date:</i>	The date on which the Premises is released from the Master Lease (as defined below) and accepted by Port pursuant to Section 14.7(c) of the DDA (as defined below), and subject to approval of this Lease by the Port Commission and the Board of Supervisors and Mayor.

<i>Expiration Date:</i>	Unless earlier terminated or extended in accordance with this Lease, the Expiration Date will be the date that is fifteen (15) years after the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then the Expiration Date shall be calculated from the first day of the first month after the Commencement Date.
<i>“As-Is” Condition (§2.9):</i>	Port will deliver the Premises to Tenant on the Commencement Date in their then-existing and as-is condition, with no representations, warranties, or other obligation of Port, including but not limited to the repair or construction of any Improvements or alterations, and subject to all applicable Laws governing their use, occupancy and possession.
<i>Right to Institute Rules and Regulations (§2.11):</i>	Tenant will be subject to current and future Rules, Regulations, and Laws related to parks and open space, as further described in Section 2.11 .
<i>Term (§3.1Error! Reference source not found.):</i>	One (1) 15-year term, as further described in Section 3.1 .
<i>Renewal Options (§3.2):</i>	Three (3) Tenant options to extend, each for five (5) years, as further described in Section 3.2 .
<i>Termination Rights (§3.3):</i>	<p>Tenant may terminate the Lease prior to the Expiration Date upon ninety (90) days written notice to the Port, as further described in Section 3.3(a).</p> <p>Port may terminate the Lease prior to the Expiration Date upon ninety (90) days written notice to Tenant, as further described in Section 3.3(b).</p>
<i>Base Rent (§4.1):</i>	No base rent, as further described in Section 4.1 .
<i>Reporting (§4.3):</i>	<p>Tenant must provide to Port a Quarterly Report within sixty days after the end of each calendar quarter, as further detailed in Section 4.3(a).</p> <p>Tenant must provide to Port an Annual Report on or prior to April 1 of each year, as further detailed in Section 4.3(b).</p>
<i>Annual Budgets (§5):</i>	Each annual operating budget and capital budget must be approved by Port, as further described in Section 5.2 .
<i>Budget Variance (§5.3):</i>	After annual budget approval by Port, Tenant may, without further Port approval, re-allocate or increase expenses, as further described in Section 5.3 .

<i>Revenue Allocation (§5.5):</i>	All Gross Revenue derived from or related to the Premises, excluding Capital Improvement Sponsorships, must be allocated as described in Section 5.5 .
<i>Mission Rock Long Term Reserve Fund (§5.6):</i>	<p>The funds in the Mission Rock Long Term Reserve Fund shall only be used to fund:</p> <ol style="list-style-type: none"> 1. Repairs of unanticipated damage if Tenant's insurance proceeds are insufficient; or to repair unanticipated damage regardless of Tenant's insurance proceeds if Tenant demonstrates, to Port's reasonable satisfaction, that the overall economic impact of an insurance claim and any potential proceeds for unanticipated damage will negatively impact the Premises; or other unanticipated liabilities for which there is no applicable insurance coverage, as mutually agreed by Tenant and Port; 2. Capital Repairs and Replacements or other enhancements to: <ol style="list-style-type: none"> a. the Premises; and b. other parks, open space paseos, and public rights of way within the Mission Rock STD, so long as approved by the Port in the Budget or an amendment to the Budget; or 3. Events in support of Tenant's DEI Plan.
<i>Security Deposit:</i>	Zero Dollars (\$0)
<i>Port Loan (§7):</i>	<p>Maximum Amount: \$800,000; Maximum Annual Draw: \$300,000; Fund Availability: within 3 years of Commencement Date Interest: Zero; Eligible Uses: baseline maintenance and operations; Term: 15 years;</p> <p>each as more particularly described in Section 7 and Section 5.5.</p>
<i>Permitted Use (§8.1):</i>	<p>The primary use will be to use the Premises as a public park and open space commonly known as China Basin Park, including for events and programming, retail concessions, walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes.</p> <p>Any other use within the Premises requires the prior written consent of Port, which may be withheld in its sole discretion.</p>

<p><i>Events and Programming (§10):</i></p>	<p>Tenant must comply with and obtain all applicable regulatory and governmental approvals and permits prior to any Event.</p> <p>No less than thirty (30) days and no more than sixty (60) days prior to the commencement of each month, Tenant must submit to Port a calendar of proposed Events for the next fourteen (14) months and actual Events from the past month on a rolling basis.</p> <p>Tenant must obtain Port's prior written approval for all medium to large events (as defined in the BCDC Permit) that will last three (3) days or more, which approval shall be granted in accordance with the terms and conditions described in Section 10.</p> <p>Port will have the right to use all or any portion of the Premises from time to time throughout the Term in accordance with Section 10.7.</p>
<p><i>Subleases, Event Licenses, Concession Agreements (§10, 11,24):</i></p>	<p>Tenant is prohibited from entering into any agreement relating to the Premises with any entity, organization, or person that:</p> <ol style="list-style-type: none"> 1. is subject to an active debarment or suspension order from the City; or 2. has in the last ten (10) years, or is currently, subject to an eviction or other enforcement order prosecuted by or for the Port. <p>To comply with this provision, Tenant shall:</p> <p>(i) confirm that the applicable counterparty is not listed as a suspended or debarred entity as reported by the City, which information is publicly available at https://sf.gov/resource/2022/suspended-and-debarred-contractors (or other City database specified by the Port in writing that is accessible to Tenant); and</p> <p>(ii) include representations in its form agreements that the applicable counterparties (a) are not subject to an active debarment or suspension order from the City, and (b) have not been debarred or suspended by the City in the last ten (10) years, and (c) are not currently, subject to an eviction or judicial action or other enforcement order prosecuted by or for the Port; and</p> <p>(iii) for any agreement with a term of more than one (1) year, provide advance notice to Port of each proposed subtenant, licensee, and concessionaire prior to execution of such sublease, Event License, Concession Agreement, or other agreement with a third party, to confirm eligibility.</p> <p>Each sublease, Event License, Concession Agreement, or other agreement with a third party must:</p>

	<ol style="list-style-type: none"> 1. comply with all applicable Laws and each and every condition of this Lease; and 2. indemnify the Port, City, and their agents; and 3. be made available without redaction for Port review at Tenant's offices within thirty (30) days of execution; and 4. subject the sublease, Event License, Concession Agreement, or other agreement with a third party to a cross-default provision with any contract with Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion; and 5. be subject to Tenant's DEI Plan.
<i>Maintenance and Repairs (§15):</i>	<p>During the Term of the Lease and subject to early Tenant termination or partial closure otherwise contemplated in this Lease, Tenant will have the sole responsibility for:</p> <ul style="list-style-type: none"> • maintaining the Premises in good order and condition equal to or better than other first-class public waterfront parks and open space projects located in California, including completion of any Capital Repairs and Replacements; • completing any Compliance Improvements in accordance with all applicable Laws; and • completing any Casualty Improvements in accordance with Section 21. <p>Tenant may, but is not obligated to, complete Subsequent Horizontal Construction and any new improvements that did not exist on the Commencement Date, subject to Port's prior written approval.</p>
<i>Utilities (§16):</i>	<p>Port shall allow the Premises to be served with electricity, potable water, and internet services. Tenant shall directly contract with and pay the applicable service providers for such utility services.</p> <p>Effective as of the Commencement Date of this Lease and in accordance with that certain assignment and assumption agreement, Tenant shall assume all purchaser obligations under that certain water purchase agreement ("WPA") between Port and Mission Rock Utilities for the purchase of water for non-potable uses on the Premises. During the Term, Tenant will be solely responsible for all purchaser obligations under the WPA; provided that if one or more Specified Related Agreements are terminated that Port will reasonably compensate Tenant for both fixed costs and actual usage of non-potable water used for maintenance of such areas.</p>

<i>Exclusions from Indemnifications, Waivers, and Releases (§23.6)</i>	Indemnifications limited to the extent Claims exceed the minimum limit for Tenant's Commercial General Liability insurance applicable at the time of the Claim, as further described in Section 23.6 .
<i>Security Cameras:</i>	Tenant may install, operate and maintain security cameras on the Premises with Port's prior written approval.
<i>Prepared by:</i>	Wyatt Donnelly-Landolt

LEASE AND LOAN AGREEMENT

(China Basin Park)

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation** (“City”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“Port”), as landlord, and the Tenant identified in the Basic Lease Information (“Tenant”). The City and Port, as landlord, and Tenant are also sometimes referred to herein collectively as the “Parties” or individually as a “Party.”

Port and Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns with respect to the Master Lease, “**Horizontal Developer**”), are parties to that certain Disposition and Development Agreement dated as of August 15, 2018 (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as “**Mission Rock**” as more particularly described in the DDA and Master Lease (the “**Project Site**”). The Premises are a portion of the Project Site and have been released from the Master Lease. For the avoidance of doubt, nothing in this Lease shall modify or affect the Horizontal Developer’s obligations and responsibilities under the DDA or the Master Lease.

The basic lease information (the “**Basic Lease Information**”), the exhibits, schedule and this Lease Agreement are and will be construed as a single instrument and are referred to herein as this “**Lease**.” In the event of any conflict or inconsistency between the Basic Lease Information and this Lease Agreement, the Lease Agreement will control.

The Parties intend this Lease to constitute one part of: (i) the “**Management Agreement**” as defined in the Rate and Method of Apportionment of Special Taxes for City and County of San Francisco Special Tax District No. 2020-1 (Mission Rock Facilities and Services) (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**RMA**”), and (ii) the “**Management Agreement**” as defined in the Mission Rock Master Declaration of Restrictions recorded in the Official Records of San Francisco County on June 25, 2020 as Instrument No. 20209K94434400080 (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Declaration**”), and the Tenant shall constitute the “**Public Space Manager**” as defined in the Master Declaration.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. PREMISES; AS-IS CONDITION.

2.1. Premises. Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the real property commonly known as “**China Basin Park**” as described and depicted in the attached *Exhibit A-1* and *Exhibit A-2* and incorporated herein by reference, including the Improvements thereon (collectively, the “**Premises**”).

2.2. Adjustment of Premises.

(a) **Mutual Adjustment of Premises.** From time to time during the Term, the Parties reserve the right, upon mutual agreement of Port and Tenant, to modify the Premises,

including to accommodate the completion of the Subsequent Horizontal Construction and any subsequent Improvements as approved by Port.

(b) **Memorandum of Technical Corrections.** In addition, the Parties reserve the right, upon mutual agreement of Port and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof such memoranda shall be deemed to become a part of this Lease.

2.3. Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port will have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

2.4. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws and Tenant fails to address the noncompliance, whether by partial closure or as otherwise contemplated in this Lease. As further set forth in and subject to the terms of **Section 13** (Compliance with Laws and Regulations), Tenant further understands and agrees that during this Lease it is Tenant’s obligation, at no cost to Port, to cause the Premises and Tenant’s use and operation of the Premises to be in compliance with the ADA and any other federal or state disability access Laws in effect as of the date of this Lease. During this Lease it is Tenant’s obligation, at no cost to Port, to cause any Alterations or Improvements to the Premises performed by or on behalf of Tenant, to be in compliance with the ADA and any other federal or state disability access Laws in effect as of the date of such Alteration or Improvements. Port acknowledges it will be responsible for, and that Tenant shall have no obligation to, cause the Premises to be in compliance with any changes to the ADA and any other new or changed federal or state disability access Laws that both: (a) become effective after the date of this Lease, and (b) impose an affirmative obligation to comply prior to or regardless of any Alterations or Improvements. Tenant will notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws. If any portion of the Premises (other than Alterations or Improvements performed by Tenant) does not comply with the ADA, and necessary repairs or restoration, alterations, installations, improvements, or additions to any Improvements or to the Premises shall constitute Compliance Improvements, and shall be governed by **Section 13**.

2.5. No Right to Encroach.

(a) If Tenant (including, its Agents, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the “**Encroachment**

Area”), then upon written notice from Port (“**Notice to Vacate**”), Tenant will immediately vacate such Encroachment Area and, if such Encroachment Area is subject to Port jurisdiction, pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the “**Encroachment Area Charge**”). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period will be prorated based on a thirty (30) day month. In no event will acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant’s obligation to Indemnify Port as set forth in **Section 2.5(c)**), at law or in equity.

(b) In addition, Tenant will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant’s failure to comply with the applicable Notice to Vacate and Port’s right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port’s rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in **Section 23** below (Indemnity and Exculpation) will also apply to Tenant’s (including, its Agents, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant will additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, reasonable attorneys’ fees and costs.

(d) All amounts set forth in this Section will be due within three (3) Business Days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

2.6. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, is being constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

2.7. No Light, Air or View Easement. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Premises or by any vessels berthed near the Premises will in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Rent or damages, or affect this Lease in any way or Tenant's obligations hereunder.

2.8. Unique Nature of Premises. Tenant acknowledges that: (a) the Premises is located along the waterfront and near buildings and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and/or (d) Port cannot guarantee that the Premises will be suitable for leased occupancy during the entire Term of this Lease.

2.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are being leased and accepted in their then-existing and as-is condition, with no representations, warranties, or other obligations of Port, including but not limited to the repair or construction of any Improvements or alterations, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as **Schedule 2.9**. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Tenant expressly acknowledges that a portion of the Premises are or will be subject to that certain license agreement by and between Port and Pacific Gas and Electric Company, a California corporation (and its successors and assigns) with respect to that certain electric power line located in the Premises approximately parallel to Third Street and serving the Third Street Bridge Pilot House, which serviced building is adjacent to the Premises.

2.10. Release and Waiver. As part of its agreement to accept the Premises in their "As Is With All Faults" condition (but excluding any express obligation of Port or breach by Port of any express representation, warranty, or covenant in this Lease), Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the Permitted Use, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City. Notwithstanding the foregoing, the releases and waivers in this **Section 2.10** shall not be applicable to any default by Port in the performance of any of Port's obligations under this Lease.

2.11. Port's Right to Institute Rules and Regulations. Port may impose Rules and Regulations related to parks, open space, energy, water, gas, and other matters within Port

jurisdiction reasonably necessary for the proper use, operation and maintenance of parks and open space within Port jurisdiction. Port shall meet and confer with Tenant before imposing Rules and Regulations applicable to the Premises. Port hereby confirms that no Rules and Regulations currently exist for the Premises. Tenant agrees to be bound by such reasonable Rules and Regulations Port later imposes; provided that no such Rules or Regulations shall impose restrictions or requirements that are materially more onerous than comparable rules and regulations generally applicable to parks or open spaces, unless such Rules and Regulations are (i) specific to a unique feature, aspect, or characteristic of the Premises (including but not limited to the management and operation of the Premises), and (ii) reasonable, as determined by the Port Commission. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent or damages.

3. TERM OF LEASE; RENEWAL OPTIONS; TERMINATION RIGHTS.

3.1. Term. The term of this Lease (the "**Term**") will be for the period of years specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date, subject to renewal as set forth in **Section 3.2**, unless earlier terminated. Promptly following the actual Commencement Date, Port and Tenant will execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as **Exhibit C**, confirming the actual Commencement Date and Expiration Date, but either Party's failure to do so will not affect the commencement or expiration of the Term.

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease will not be affected thereby and Port will not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent will not commence until Port delivers possession of the Premises.

3.2. Renewal Options.

(a) Subject to Tenant's compliance with the terms of this Lease, Port grants to Tenant three (3) options ("**Renewal Options**") to extend the Term, each for an additional five (5) years (the "**Renewal Term**"). The Renewal Term will commence upon the date after the Expiration Date upon the terms and conditions of this **Section 3.2**. Tenant may exercise the Renewal Option no earlier than twenty-four (24) months prior to the Expiration Date and no later than nine (9) months prior to the Expiration Date by delivering written notice to Port of the same. To facilitate long-term Sponsorships, Port may in its sole and absolute discretion agree to either Tenant's earlier exercise of the Renewal Option or to attorn to one or more approved Sponsorship Agreements.

(b) Port may, in its sole and absolute discretion, elect by written notice to Tenant, to reject Tenant's exercise of the Renewal Option, whereupon the Renewal Option will be null and void, if:

(i) an Event of Default occurred and is continuing either: (i) at the time Port receives Tenant's notice to exercise a Renewal Option, or (ii) on the first day of the Renewal Term, unless on the first day of the Renewal Term the Event of Default is non-monetary and subject to diligent efforts by Tenant to cure (as reasonably determined by Port); or

(ii) Tenant's score under the Park Maintenance Standards is deficient and has been below the City-wide average score for other public parks in the City & County of San Francisco for two of the last three years; or

(iii) three (3) or more material Operational Dispute Notices are outstanding and have not been resolved by the parties; or

(iv) six (6) or more material Operational Dispute Notices were filed in the previous thirty-six (36) months; or

(v) Tenant owes and has not paid any outstanding debt or other payment to Port in connection with the Port Loan, provided however that Tenant may unconditionally pay to Port and fully satisfy the outstanding debt or other payment obligation within ten (10) Business Days of Port's written notice to Tenant, which satisfaction will nullify and void Port's written notice to Tenant rejecting the exercise of the Renewal Option under this subsection.

(c) **Effect on Agreement Terms.** If Tenant elects to exercise the Renewal Option, and Port does not reject Tenant's exercise of the Renewal Option in accordance with this Lease, then all the terms, covenants and conditions of this Lease will remain the same, except that (i) the Expiration Date will mean the last day of the Renewal Term, (ii) the Term will include the current Renewal Term, and (iii) based on the Park Evaluation, Tenant will perform certain additional Capital Repairs and Replacements as agreed to between the Parties in accordance with **Section 15** (Maintenance and Repairs).

3.3. Termination Rights.

(a) Tenant may terminate this Lease prior to the Expiration Date upon ninety (90) days written notice to Port if:

(i) The City levies the Contingent Services Special Tax above the Permitted Contingent Services Special Tax Amount Levy, as defined in **Section 4.2**; or

(ii) One or more Specified Related Agreements terminate due solely to Port's default under that agreement (and such default was not caused by circumstances outside Port's reasonable control), and Port and Tenant are unable to agree on appropriate compensation (or Port fails to fulfill or comply with such agreement) for the costs of non-potable water used in the areas previously covered by the terminated agreement(s); or

(iii) Tenant demonstrates to Port, in Port's reasonable discretion, that all Tenant funds presently held or anticipated by Tenant are less than the amount of funds reasonably necessary to operate and maintain the Premises in accordance with this Lease and: (A) complete necessary Capital Repairs and Replacements, Compliance Improvements, or Casualty Improvements, (B) complete any Remediation that is not Tenant's obligation to perform and which Port has declined to timely complete, or (C) otherwise comply with any new rules, regulations, or other requirements imposed upon Tenant; and upon such demonstration, Port, in its sole and absolute discretion, chooses not to provide funds reasonably adequate to fill the applicable funding gap or otherwise cause the completion of such Capital Repairs and Replacements, Compliance Improvements, Casualty Improvements, or Remediation.

(b) Port may terminate this Lease prior to the Expiration Date upon ninety (90) days written notice to Tenant if:

(i) One or more Specified Related Agreements terminate due solely to Tenant's default under that agreement (and such default was not caused by circumstances outside Tenant's reasonable control), and Port and Tenant are unable to agree on appropriate compensation for the costs of non-potable water used in the areas previously covered by the terminated agreement(s); or

(ii) Upon any third notice of Event of Default within a thirty-six (36) month period, and regardless of Tenant's prior cure, so long as the notices do not arise exclusively from a single event or occurrence; or

(iii) An uncured Event of Default is continuing, pursuant to **Section 25**.

3.4. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260, et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.

4. RENT; CONTINGENT SERVICES SPECIAL TAXES; REVENUE REPORTING.

4.1. Base Rent. In consideration of Tenant assuming throughout the entirety of the Term, all liability, costs and expenses related to Premises, Tenant will have no obligation to pay Port monthly Base Rent during the Term, unless amended by the Parties.

4.2. Contingent Services Special Taxes. During the Term, the Permitted Contingent Services Special Tax Levy Amount shall be calculated pursuant to this **Section 4.2**, and which amount shall be subject to Port Commission approval with each annual Budget.

(a) The Initial Budget, and each Budget prepared by Tenant thereafter, shall identify costs associated with the operation and maintenance of: (i) the Premises, and (ii) the property and improvements subject to the Port Paseo and Open Spaces Management Agreement.

(b) **Initial Permitted Contingent Services Special Tax Levy Amount.** Based on the Initial Budget approved by the Port Commission, the “**Permitted Contingent Services Special Tax Levy Amount**” shall be defined depending on the status of this Lease and the Port Paseo and Opens Spaces Management Agreement, as follows:

(i) Zero Dollars (\$0.00), if this Lease and the Port Paseo and Open Spaces Management Agreement are both in effect and the Master Association provides revenues to Tenant equal to or greater than the Maximum Contingent Services Special Tax Revenues under the RMA; or

(ii) No more than twenty-five percent (25%) of the Maximum Contingent Services Special Tax Revenues under the RMA, if this Lease is in effect but the Port Paseo and Open Spaces Management Agreement is not in effect, so long as the Master Association provides revenues equal to or greater than seventy-five percent (75%) of the Maximum Contingent Services Special Tax Revenues under the RMA;

(iii) as shown in the table below for demonstrative purposes only. Provided further, that if funds provided by the Master Association to Tenant are less than seventy-five percent (75%) of the Maximum Contingent Services Special Tax Revenues under the RMA, then the Permitted Contingent Services Special Tax Levy Amount shall increase so that the combined value of the Master Association’s provision of funds to Tenant plus the revenue, if fully levied, from the Contingent Services Special Tax equals one hundred percent (100%) of the Maximum Contingent Services Special Tax Revenues under the RMA.

Permitted Contingent Services Special Tax Levy Amount:	\$0.00	25%*
Status of Lease:	In Effect	In Effect
Status of Port Paseo and Open Spaces Management Agreement:	In Effect	Not in effect
* Percentage may increase pending Master Association contribution to Tenant as described in Section 4.2(b)(ii) .		

(c) Tenant shall calculate the Permitted Contingent Services Special Tax Levy Amount for each scenario described in **Section 4.2(b)**, above, for submission and approval with each annual Budget.

(d) **Future Permitted Contingent Services Special Tax Levy Amount.** After the Initial Budget year, Tenant’s future calculations of the Permitted Contingent Services Special Tax Levy Amount shall be based on actual expenses from one or more prior years using the following formulas, unless otherwise mutually agreed by the Parties:

(i) If this Lease and the Port Paseo and Open Spaces Management Agreement are both in effect, then Zero Dollars (\$0.00).

(ii) If this Lease is in effect but the Port Paseo and Open Spaces Management Agreement is not in effect, then an amount equal to the product of (1) the then-current Maximum Contingent Services Special Tax Revenues under the RMA, and (2) a fraction in which the numerator equals the actual operation and maintenance costs applicable to the Port Paseo and Open Spaces Management Agreement in the most recently concluded year, and the denominator equals the sum of the actual operation and maintenance costs applicable to both the Port Paseo and Open Spaces Management Agreement and this Lease; as shown in the formula below for demonstrative purposes only.

Permitted Contingent Special Services Tax Levy Amount	=	Max. Contingent Services Special Tax Revenues (current)	X	Paseo and Open Spaces Management Agreement O&M prior costs	
				Lease O&M prior costs	+

4.3. Reporting.

(a) **Quarterly Report.** Within sixty (60) days after the end of each calendar quarter, Tenant will deliver to Port a quarterly report for the Premises (“**Quarterly Report**”) including: (i) actual Operating Expenses and actual Capital Expenses plus an updated proposed budget based on known changes to Gross Revenues, Operating Expenses, and/or Capital Expenses, and (ii) any new Concession Agreements entered into during the prior quarter. Port may request additional information in its reasonable discretion.

(b) **Annual Report.** Prior to April 1 of each year, Tenant will deliver to Port an “**Annual Report**” for the previous calendar year that includes a narrative on Park operations for the prior calendar year, and the following:

(i) The Annual Report must identify as separate line items for the Premises: actual Gross Revenues, Sponsorship Revenues, Donations, Operating Expenses, and Capital Expenses. The Annual Report must also contain a summary of improvements, maintenance, and activities on the Premises during the prior calendar year, including but not limited to:

(ii) A copy of the event report prepared pursuant to the BCDC Permit, and a supplemental event report containing similar information for Events held on the Premises that are not subject to the BCDC Permit; and

(iii) List of all medium to large Events and all private Events held on the Premises during the prior calendar year and a summary of small public events in substantially the same format attached as **Exhibit [X]**; and

(iv) A table summarizing the material terms of any new sublease, Event License, Concession Agreement, or other agreement affecting the Premises with a term equal to or greater than one year and entered into during the prior calendar year, in substantially the same format attached as **Exhibit [X]**; and

(v) The Park Evaluation Report; and

(vi) The amount of any budget surplus or deficit to be carried over from a previous calendar year.

4.4. Default Interest. Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, will bear interest from the due date until paid at the Interest Rate, compounded annually. However, interest will not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest will not excuse or cure any default by Tenant. Tenant will also pay any costs, including reasonable attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

4.5. Late Charges/Habitual Late Payer. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease or Tenant's failure to provide the Quarterly Report to Port within fourteen (14) calendar days of the deadline, will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent or submit the Quarterly Report on the date due, such failure will be subject to a Late Charge. Tenant will also pay any costs including reasonable attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent or submit the Quarterly Report. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant will pay, as Additional Rent, an amount equal to One Hundred Dollars (\$100.00) (as such amount may reasonably be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section will not excuse or cure any default by Tenant.

4.6. Returned Checks. If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant will pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment will be subject to a Late Charge as well as interest at the Interest Rate.

4.7. Net Lease. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties will Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including the Improvements. Without limiting the foregoing but subject to all terms and conditions of this Lease (including but not limited to Tenant termination in **Section 3.3**), Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever (including for the use, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof), the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and the Improvements thereon, or any rights or interests of Port in or under this Lease. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, will relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or will otherwise relieve Tenant from any of its obligations under this Lease, or will give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

4.8. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in **Sections: 16.1** (Utilities), **19.3** (Tenant's Environmental

Condition Notification Requirements), **19.8** (Storm Water Pollution Prevention), **31.1(d)** (CMD Form), and **35** (Estoppel Certificate) or to provide evidence of the required insurance coverage described in **Section 20** below, then upon written notice from Port of such failure, Tenant will pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant will pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this **Section 4.8** represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this **Section 4.8** and that Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this **Section 4.8** and the reasonableness of the amount of the charges described in this **Section 4.8**.

5. ANNUAL BUDGETS, REVENUES, RESERVES & ACCOUNTS, BOOKS & RECORDS, & AUDITS.

5.1. Initial Budget. The Parties have agreed upon an initial annual operating budget and initial capital budget (collectively, the "**Initial Budget**") for the operation, maintenance, and repair of the Premises during the remainder of the first fiscal year of the Term, or other such time period agreed upon by the Parties. The Initial Budget is attached hereto as **Exhibit D**.

5.2. Annual Operating Budget and Capital Budget.

(a) Prior to the expiration of the Initial Budget, and on an annual basis thereafter, Tenant will prepare and submit to Port an operating budget for Port's approval in its reasonable discretion ("**Operating Budget**") for the Premises for the following fiscal year (or portion thereof as agreed to by Port) and an updated capital budget ("**Capital Budget**") for the Premises for the following five (5) fiscal years in similar forms to the Initial Budget (or as otherwise requested by Port). Each budget approved by Port during the Term will be referred to herein as the "**Budget**."

(b) Port will review and respond to Tenant, including listing any specific objections to such proposed budget, within thirty (30) calendar days after receipt of such proposed budget. If Port fails to respond to such proposed budget within such thirty (30) calendar day period, then Tenant will deliver to Port a second notice requesting Port's response ("**Second Budget Notice**"). The Second Budget Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: **"APPROVAL REQUEST FOR MISSION ROCK OPEN SPACE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIFTEEN (15) CALENDAR DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to respond within fifteen (15) calendar days after Port's receipt of the Second Budget Notice, then such non-response will be deemed to be approval of such proposed budget. If Port timely objects to a proposed budget and the Parties cannot mutually agree upon an updated budget prior to the commencement of the fiscal year, then the Port shall be deemed to have approved a budget equal to the prior year's Budget, adjusted to include any new Events that will be directly or specifically funded by Sponsorships. Any revision to or modification of the deemed-approved budget beyond the variance permitted in **Section 5.3**, below, shall be subject to Port review and approval as described in this Section.

(c) No later than forty-five (45) days after the end of each quarter, Tenant shall provide Port with a quarterly budget update for informational purposes only. Each quarter, Port or Tenant may request a reforecasting of the Budget for the remainder of the fiscal year. Port approval for a Budget reforecast shall only be required if the reforecast Budget includes deviations from the then-current Budget that would require Port consent or approval pursuant to

Section 5.3. In the event of an anticipated Budget shortfall, Port may request information from the Tenant regarding Tenant's intended approach to address the Budget shortfall.

(d) In preparing each Operating Budget and Capital Budget, (i) Tenant may consult with the Master Association to the extent required in connection with the portion of the budgets relating to association dues, and (ii) after the third year of the Term, Port and Tenant shall meet to discuss funding sources for costs associated with maintenance and operation of the Premises and any other public open spaces operated or maintained by Tenant within the Mission Rock STD.

5.3. Permitted Budget Variance. Tenant will utilize commercially reasonable, good faith efforts to operate the Premises without exceeding the parameters of the Initial Budget and subsequent Budgets; provided however, that (i) Tenant shall have no obligation to spend amounts set forth in the Budget, and (ii) Tenant's failure to operate the Premises within the Initial Budget or any subsequent Budget parameters will not be deemed a default by Tenant hereunder unless such failure was the result of Tenant's failure to act in good faith or Tenant's failure to obtain Port's consent to any expenditures or overages as required hereunder. Without limiting the foregoing, Tenant will not make expenditures for the operation and maintenance or improvement of the Premises in any fiscal year that would exceed the corresponding line item in the applicable Budget for such fiscal year without obtaining Port's prior written consent, in Port's reasonable discretion. Notwithstanding the foregoing, Tenant will have the right, without obtaining Port's prior written consent, to the following (each, a "**Permitted Variance**"):

(a) re-allocate or increase Operating Expenses within the Operating Budget subject to the following conditions:

(i) re-allocation or increases shall not increase the total Operating Budget unless operating expenses are solely funded by excess revenues or the Operating Reserve Account;

(ii) subject to the prior condition, re-allocation or increases cannot result in the total Operating Budget exceeding 150% of the previously approved Operating Budget;

(iii) re-allocation is prohibited from the WPA line item, unless there is a corresponding decrease in WPA costs; and

(iv) re-allocation is prohibited from the LCC Incremental Cost line item, which may not exceed \$150,000 in any year, unless there is a corresponding decrease in LCC Incremental Costs; or

(b) re-allocate capital expenses within the Capital Budget, but any re-allocation shall not increase the total Capital Budget.

(c) Expense variances beyond those identified above shall require the Port's prior written approval.

(d) In the event of an emergency, as reasonably determined by Tenant, Tenant may seek oral approval from the Port's Executive Director or the Director's designee to make expenditures in excess of applicable line items in the Budget for: (i) emergency repairs required to prevent further immediate damage to property or injury to persons, or (ii) expenses required to ensure the general safety of the public, but after oral approval will follow the procedures set forth in this Section in reallocating funds seeking an amendment to the Budget, or including the costs of such repairs or expenses in a future Budget.

5.4. Annual Budget Reconciliation. No later than March 31st for each fiscal year during the Term, Tenant will deliver to Port a reasonably detailed written statement (each an "**Annual Reconciliation**") setting forth (i) Tenant's final determination of the actual Operating Expenses and Capital Expenses incurred with respect to the operation, maintenance and repair of

the Premises for the immediately preceding fiscal year and (ii) the amount of any variance between the actual Operating Expenses and Capital Expenses incurred for the immediately preceding fiscal year and the estimated amounts for such Operating Expenses and Capital Expenses set forth in the applicable Budget for such fiscal year.

5.5. Annual Revenue Allocation. All Gross Revenue except Donations and Capital Improvement Sponsorships will be subject to the following revenue allocation during the Term of this Lease, except as superseded in **Section 7.5** (Return of Excess Port Loan Proceeds):

(a) First, to Operating Expenses and Capital Expenses consistent with the Budget (and each approved or Permitted Variance), except for any Capital Expenses that are funded directly by Capital Improvement Sponsorships;

(b) Second, to the Operating Reserve Account, provided that:

(i) the maximum annual amount deposited in the Operating Reserve Account shall not exceed either: (1) if any amounts drawn by Tenant from the Port Loan have not been repaid, then \$100,000; or (2) if Tenant has repaid all amounts (if any) drawn from the Port Loan, then the lesser of: (x) \$200,000, as adjusted annually by any change in CPI; or (y) 20% of total Operating Expenses for the applicable fiscal year and Capital Expenses in the Budget for the applicable fiscal year; and

(ii) the total maximum amount at any time in the Operating Reserve Account shall not exceed either: (1) if any amounts drawn by Tenant from the Port Loan have not been repaid, then \$100,000, as adjusted annually by any change in CPI; or (2) if Tenant has repaid all amounts (if any) drawn from the Port Loan, then \$600,000, as adjusted annually by CPI (as applicable, the “**Maximum Aggregate Operating Reserve Account Amount**”);

(c) Third, to repay all outstanding amounts drawn by Tenant from Port Loan;

(d) Fourth, to the Maintenance Reserve Account, provided that no additional revenue shall be allocated to the Maintenance Reserve Account if the funds in the Maintenance Reserve Account equal or exceed the Capital Needs Amount;

(e) Fifth, to the Mission Rock Long Term Reserve Fund; and

(f) Finally, once the funds in the Mission Rock Long Term Reserve Fund are equal to the aggregate amount in the Operating Reserve Account and the Maintenance Reserve Account, all remaining Gross Revenues shall be split 50% to the Mission Rock Long Term Reserve Fund and 50% to repay the Horizontal Development Costs (as defined in the DDA). Any portion of Gross Revenue which is to be used to repay Horizontal Development Costs pursuant to this Lease shall be referred to herein as “Park Revenue HDC Funds.” Any capitalized terms used in this Section that are not defined in this Lease shall have the meanings given to them in the DDA or Financing Plan, as applicable. Park Revenue HDC Funds shall constitute an alternate Project Payment Source for Capital Costs as contemplated by **Section 1.6** of the Financing Plan. If any Annual Report concludes that Park Revenue HDC Funds exist, such funds shall promptly be used to pay Approved Payments in accordance with the priorities for payment set forth in the Financing Plan.

5.6. Reserves and Accounts.

(a) Operating Reserve Account. Tenant will establish and maintain a separate depository account (the “**Operating Reserve Account**”) in an amount not to exceed the Maximum Aggregate Operating Reserve Account Amount. The Operating Reserve Account shall be used only to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, insurance premiums, or other expenses which are payable other than monthly, abnormally high vacancies, and other expenses that vary seasonally (collectively, “**Operating Expense Fluctuations**”), or for such other costs, not to exceed thirty-five percent (35%) of the Operating Reserve Account balance at the

beginning of the fiscal year. The other sixty-five percent (65%) of funds in the Operating Reserve Account at the beginning of the fiscal year may only be used for Operating Expense Fluctuations, and Tenant will not use the funds for any other purpose unless Tenant obtains the prior written consent of Port, which will not be unreasonably withheld, conditioned, or delayed.

(b) **Maintenance Reserve Account.** Tenant will establish and maintain a separate depository account (the “**Maintenance Reserve Account**”) in an amount as set forth in the Budget and in any event not to exceed the cost of all reasonably anticipated capital repairs and improvements (“**Capital Needs Amount**”) which are reasonably required to preserve, repair, or replace capital improvements, fixtures, or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the Improvements on the Premises (“**Capital Repairs and Replacements**”); provided that the Capital Needs Amount shall not include the costs of any Capital Repairs or Replacements to the extent they will be funded by Capital Improvement Sponsorships. The funds in the Maintenance Reserve Account will be used only for Capital Repairs and Replacements, and Tenant will not use the funds for any other purpose unless Tenant obtains the prior written consent of Port, which will not be unreasonably withheld, conditioned, or delayed. The Capital Needs Amount shall be determined by the Facilities Condition Report and shall include the cost of all reasonably anticipated Capital Repairs and Replacements for the ten (10) year period covered by such Facilities Condition Report less any amounts funded by Capital Improvement Sponsorships. As used herein, “**Facilities Condition Report**” means a facilities condition report prepared by a qualified team of professionals selected by Tenant with at least five (5) years of experience in constructing, renovating and/or evaluating major park and open space projects in California which identifies a recommended schedule of repairs to maintain the Premises in a manner consistent with standards set forth in **Section 15** and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall obtain an updated Facilities Condition Report no later than ninety (90) days prior to each ten (10) year anniversary of the Commencement Date. Tenant will not enter into any agreement to address Capital Repairs and Replacements in an amount in excess of the Maintenance Reserve Account balance without the prior written consent of the Port.

(c) **Mission Rock Long Term Reserve.** Tenant will establish and maintain a separate depository account (the “**Mission Rock Long Term Reserve Fund**”). The funds in the Mission Rock Long Term Reserve Fund shall only be used to fund:

(i) Repairs of unanticipated damage if Tenant’s insurance proceeds are insufficient; or to repair unanticipated damage regardless of Tenant’s insurance proceeds if Tenant demonstrates, to Port’s reasonable satisfaction, that the overall economic impact of an insurance claim and any potential proceeds for unanticipated damage will negatively impact the Premises; or other unanticipated liabilities for which there is no applicable insurance coverage, as mutually agreed by Tenant and Port;

(ii) Capital Repairs and Replacements, Casualty Improvements, Compliance Improvements, Remediation, or other enhancements to:

(1) the Premises; and

(2) other parks, open space paseos, and public rights of way within the Mission Rock STD, so long as approved by the Port in the Budget or an amendment to the Budget; or

(iii) Events in support of Tenant’s DEI Plan.

(d) **Donations; Capital Improvement Sponsorships.** Tenant will establish and maintain a separate depository account for Donations and will use such Donations in accordance with any gift restrictions placed on such Donations. Tenant will establish and maintain a separate depository account for Capital Improvement Sponsorships and will use such Capital

Improvement Sponsorships funds in accordance with lawful restrictions placed on such Capital Improvement Sponsorships.

(e) **Reserves at Surrender; Survival.** Upon expiration or early termination of this Lease, Tenant will notify Port of any remaining liabilities of Tenant (including any termination fees) (“**Outstanding Liabilities**”). If funds in the Operating Reserve Account are not sufficient to pay all Outstanding Liabilities, Tenant and Port shall meet and confer to mutually and reasonably determine the resolution of Outstanding Liabilities, which may include (i) Port’s assumption of (in Port’s sole discretion), (ii) potential renegotiation of, and/or (iii) the order of priority to pay, Outstanding Liabilities. Tenant acknowledges and agrees that any fees must be commercially reasonable, including termination fees paid to affiliates, which must be substantiated as such upon the reasonable request of Port. Upon resolution of Outstanding Liabilities, Tenant shall unequivocally surrender and transfer to Port all funds remaining in the Operating Reserve Account, Maintenance Reserve Account, and Mission Rock Long Term Reserve Fund, and all records of expenditures of such funds within the prior three (3) years. All such funds transferred to Port will be used by Port or its Agent only for Operating Expenses and Capital Repairs and Replacements within the Mission Rock STD, as applicable. The terms of this Section will survive the expiration or earlier termination of this Lease.

5.7. Books and Records. Tenant will make available to Port during the Term, upon no less than ten (10) Business Days prior written notice to Tenant, complete and accurate Books and Records that contain all information required to permit Port to verify total Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied, or other such method as is reasonably acceptable to Port, from period to period with respect to all operations of the business to be conducted in or from the Premises and will retain such Books and Records for a period of the later of (i) three (3) years after the end of each calendar year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the Parties hereto, until such audit or controversy is terminated (the “**Audit Period**”).

5.8. Audits. Port Representatives will have the right, from time to time, to examine and/or cause a complete audit (but not to make copies, unless in connection with discovery in the course of litigation) of any or all Annual Reconciliations and Tenant’s Books and Records. In connection with any such examination and/or audit, Port Representatives will have the right, from time to time, to request, in a written notice given to Tenant (each, a “**Records Request**”), that Tenant make, or cause to be made, available to Port Representatives, at the Premises or at Tenant’s principal office within the City and County of San Francisco, the Books and Records relating to any Audit Period. Tenant, within thirty (30) days after Tenant’s receipt of any Records Request (each such 30-day period, a “**Submission Period**”), will make, or cause to be made, available to Port Representatives the Books and Records requested by Port in such Records Request, which Books and Records will be sufficient to permit an accurate determination of Operating Expenses and Capital Expenses for the applicable Audit Period. If, with respect to any Records Request, Tenant fails to make, or cause to be made, available the Books and Records requested by such Records Request at the Premises or at Tenant’s principal office within the City and County of San Francisco within the applicable Submission Period (a “**Records Default**”) and such Records Default will continue for a period of ten (10) Business Days following written notice thereof to Tenant, such Records Default will constitute an immediate Event of Default by Tenant hereunder. For purposes of this **Section 5.8**, the phrase “make available” or other words of similar import will be deemed to require that Tenant make, or cause to be made, the Books and Records requested by any Records Request available to Port representatives at Tenant’s election, either at the Premises or at Tenant’s principal office within the City and County of San Francisco. Notwithstanding anything to the contrary herein, unless there is a continuing Event of Default by Tenant under this Lease, Port will not initiate a new audit more than one time in any calendar year.

6. TAXES AND ASSESSMENTS.

6.1. *Payment of Taxes.* During the Term, Tenant agrees to pay, when due, to the proper authority any and all real and personal property taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to the transfer of the leasehold interest in the Premises pursuant to the Lease, but excluding any such taxes separately assessed, levied, or imposed on any subtenant) whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the San Francisco Administrative Code. Tenant will not permit any of the above taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute and without limiting Tenant's right to contest, Tenant will Indemnify Port, City, and their Agents from and against all Claims resulting therefrom.

6.2. *Possessory Interest Tax.* Port and Tenant mutually acknowledge and agree that if this Lease creates a possessory interest subject to property taxation, the Parties intend for the value of such possessory interest to be Zero Dollars (\$0.00) because Base Rent is Zero Dollars (\$0.00) and Tenant is generally required to permit public access to the Premises as public open space.

7. *PORT LOAN.* To fund baseline operations and maintenance of the Premises for approximately three (3) years from the Commencement Date, the Port shall make available to Tenant up to Eight Hundred Thousand Dollars (\$800,000), as further described in this *Section 7* (the "**Port Loan**").

7.1. *Availability of Funds.* Port will make available to Tenant up to Three Hundred Thousand Dollars (\$300,000) in each calendar year of 2025, 2026, 2027, and 2028, subject always to the maximum total disbursement of Eight Hundred Thousand Dollars (\$800,000). Tenant may only receive one disbursement of Port Loan funds per calendar year.

7.2. *Repayment Obligation; Term.* All Port Loan funds shall be repaid to Port on or before the expiration of the initial fifteen-year Term of this Lease ("**Port Loan Due Date**"), regardless of the date of request for or disbursement of Port Loan funds. No interest shall be due or owing to Port so long as the disbursed Port Loan funds are repaid to Port prior to the Port Loan Due Date. Any outstanding balance, if not paid within five (5) days following the Port Loan due Date, will bear simple interest at the "prime rate," as designated and published from time to time in The Wall Street Journal (or any successor publication thereto), per year from the due date until paid. Notwithstanding the ultimate Port Loan Due Date, Tenant shall repay Port Loan funds to Port in accordance with *Section 5.5* and *subsection 7.5(b)*.

7.3. *Disbursement Process.*

(a) **Tenant Request.** To receive Port Loan funds, Tenant shall submit a written request to Port that: (a) includes a Quarterly Report required under *subsection 4.3(a)*, (b) demonstrates an anticipated budget shortfall occurring on or before the end of the calendar year,

(c) requests a specific disbursement amount, and (d) proposes itemized use(s) of the requested disbursement amount for baseline operations and maintenance (as described below), plus a contingency amount of up to twenty-five percent (25%) of the proposed use(s), up to the annual and total Port Loan limits.

(b) Port Response. Port shall respond in writing to Tenant's request within thirty (30) days of receipt and either: approve the Tenant request, or propose an alternate disbursement amount based on the Quarterly Report and proposed itemized use(s) for baseline operations and maintenance.

(c) Loan Documentation. Upon the first request for disbursement of a Port Loan, Tenant shall sign a promissory note in the form attached to this Lease as **Schedule 7** (the "Note"), and Port shall disburse funds to Tenant. Upon each subsequent request for disbursement of Port Loan proceeds, Tenant and Port shall initial the allonge to the Note setting forth the disbursed amount. Upon any repayment of the Port Loan, including any payment of Port Loan Excess Proceeds, Port and Tenant may initial the allonge to the Note reflecting the repayment of Port Loan proceeds.

7.4. Eligible Uses. Tenant may use Port Loan funds for baseline operations and maintenance costs for the Premises, as reasonably determined by Port. Baseline operations and maintenance costs for the Premises may include but are not limited to: costs for landscaping services, maintenance services, water and other utility costs, and repair of capital assets (time and materials).

7.5. Reporting Obligations; Port Loan Excess Proceeds.

(a) Quarterly and Annual Port Loan Detail Report. If Tenant maintains an outstanding Port Loan balance or repayment obligation, then Tenant shall include the following information when submitting each Quarterly Report pursuant to **subsection 4.3(a)**, Annual Report pursuant to **subsection 4.3(b)**, and Budget Reconciliation pursuant to **Section 5.4**:

- (i) amount of Port Loan funds received in the reporting period (if any);
- (ii) itemization of the use(s) of Port Loan funds in the reporting period (if any);
- (iii) the total amount of Port Loan funds received since the Commencement Date;
- (iv) the date(s) and amount(s) of any repayment to Port since the Commencement Date;
- (v) projection of potential repayment dates and amounts pursuant to **Section 5.5**; and
- (vi) the current outstanding balance of Port Loan funds due and owing to Port.

(b) Return of Excess Port Loan Proceeds. In each year in which Tenant receives a disbursement of Port Loan funds and subject to **subsection 5.5(b)**, above: Tenant shall return to the Port as a partial repayment of the Port Loan, all available liquid assets at the end of the calendar year in excess of Twenty Thousand Dollars (\$20,000), which amount shall be identified in the Annual Report as "**Port Loan Excess Proceeds**." This obligation to return Port Loan Excess Proceeds to the Port supersedes the annual revenue allocation defined in **Section 5.5**. For the avoidance of doubt, Tenant shall have no immediate repayment obligation if Tenant possesses less than Twenty-Thousand Dollars (\$20,000) in available liquid assets at the end of the year in which Port Loan funds are disbursed.

7.6. Funds Subject to Appropriation. Funding for any Port or City obligations under this Lease requires lawful appropriation of funds by the Port Commission and Board of Supervisors, and certification by the Controller. The Controller is not authorized to make payments on any agreement for which funds have not been lawfully appropriated and certified as available, whether in the budget or by supplemental appropriation. This **Section 7.6** shall not be interpreted to limit or otherwise alter Tenant's right to terminate under **subsection 3.3(a)(iii)**.

8. USE OF THE PREMISES.

8.1. Permitted Use. The Premises will be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose; provided that Tenant shall not be in breach or default under this Lease if Tenant has taken commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses by Persons other than Tenant or Tenant's Agents on the Premises. Any other use within the Premises requires the prior written consent of Port, which may be withheld in its sole discretion.

8.2. Prohibited Use. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) camping;
- (c) sleeping when the Park is closed, unless associated with an Event at a reserved facility and within a designated area;
- (d) smoking;
- (e) drug use;
- (f) consuming alcohol or carrying open containers unless expressly approved, such as at a reserved facility, within a designated area, or at a permitted establishment, or as may otherwise be lawful;
- (g) climbing or affixing items to buildings, trees, lawn, or furniture, except as otherwise permitted;
- (h) using amplified sound, unless associated with an Event at a reserved facility and within a designated area and such use is in compliance with Laws and required Regulatory Approvals;
- (i) panhandling;
- (j) disorderly conduct, including fighting, yelling, disturbing other park patrons, or defying directions from Tenant staff or its Agents;
- (k) peddling and vending merchandise without a permit;
- (l) lighting fires or cooking except in any designated areas or with a permit;
- (m) littering or dumping waste;
- (n) graffiti, placing stickers, posting flyers, or otherwise defacing property;
- (o) removing or damaging plants, soil, furnishings, or other fixtures from the Premises;
- (p) feeding or harassing animals or harming their natural habitat;

(q) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(r) any activity which constitutes waste or nuisance;

(s) any activity which will in any way injure, obstruct or interfere with the rights of owners or occupants of adjacent or surrounding properties, including, but not limited to, rights of ingress and egress;

(t) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(u) construction staging for any construction occurring off the Premises, unless Tenant obtains both Port's written consent and all relevant permits;

(v) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids, or the washing of any vehicles or equipment;

(w) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, unless Tenant obtains both Port's written consent and all relevant permits; or

(x) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, unless Tenant obtains both Port's written consent and all relevant permits.

8.3. Notice of Prohibited Use Charge. In the event Port determines after inspection that Prohibited Uses are occurring due to Tenant's direct action or Tenant's failure to take commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses in operating the Premises, Port will notify Tenant of the Prohibited Use and Tenant will promptly commence commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses and will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) that Tenant has not taken commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses, then Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

9. OPERATING REQUIREMENTS AND COVENANTS GENERALLY.

9.1. Operating Standards Generally. Subject to the terms of this Lease, Tenant will maintain, operate, and use the Premises, or cause the Premises to be maintained, operated, and used in a manner consistent with this Lease and standards for the maintenance and operation as set forth in **Section 15**. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will at all times comply with this Lease, Laws (including, but not limited to the BCDC Permit

attached hereto as *Exhibit E*), and the Mission Rock Parks Plan (as amended from time to time, the (“**Parks Plan**”)) attached hereto as *Exhibit F*. Tenant will also provide (or require others to provide), services as necessary and appropriate to the uses to which the Improvements are put, including:

- (a) Repair and maintenance of the Premises, subject to and as more fully described in *Sections 9.3* and *15*;
- (b) Routine (regularly scheduled) cleaning, janitorial, pest extermination, recycling, composting, and garbage removal; restroom cleaning, window washing (including the annual exterior cleaning of all windows), and mopping and sweeping of the buildings and grounds, keeping the Premises, including all clean, tidy, and uncluttered and promptly removing all debris and waste material from these areas, as more fully described in the Park Maintenance Standards described in *Section 9.3*;
- (c) Routine (regularly scheduled) landscape and horticulture maintenance, pruning, weeding, mowing, irrigating, mulching, planting, of these areas, as more fully described in the Park Maintenance Standards described in *Section 9.3*;
- (d) Maintaining sufficient security patrols or hospitality staffing at least during the Hours of Operation;
- (e) Holding Events in accordance with *Section 10*; and
- (f) Maintaining dedicated Public Access Areas consistent with the BCDC Permit.

9.2. Operational Dispute. If Port determines that Tenant is either: (a) failing to maintain, operate, or use the Premises, or (b) causing the Premises to be maintained, operated, or used in a manner that is not consistent with this Lease and standards for the maintenance and operation set forth in *Section 15*, then Port shall give Tenant prompt written notice of such determination (each such notice, an “**Operational Dispute Notice**”). Each Operational Dispute Notice shall set forth the Port’s concerns with respect to the maintenance, operation, or use of the Premises with specificity. Upon delivery of an Operational Dispute Notice, Port and Tenant shall, within ten (10) days of receipt, meet and confer in good faith to agree to a commercially reasonable and mutually acceptable proposal to resolve the Port’s concerns. For the avoidance of doubt, the parties agree that a failure to mutually agree upon a proposed resolution to address an Operational Dispute Notice shall not, of itself, constitute an Event of Default but may be the basis for Port to provide a notice of an Event of Default in accordance with *Section 25* if the original Operational Dispute Notice identified a breach or default under the Lease.

9.3. Park Standards.

(a) Without limiting *Section 9.1* and subject to [*Section 15*], Tenant shall maintain the Premises in a manner such that the Premises receives and maintains a score that is no less than ten (10) percentage points below the most recent Citywide average score for other public parks under the park maintenance evaluation methodology adopted by the San Francisco Office of the Controller and the San Francisco Recreation and Park Department (“**RPD**”), as that methodology may be changed from time to time. For reference purposes only, the evaluation methodology currently identifies 295 park maintenance standards, which are available online at: <https://sfrecpark.org/DocumentCenter/View/18951/SFRPD-Park-Evaluation-Standards-FY22>

(b) Notwithstanding the general maintenance obligation identified in subsection (a), the Port Commission, at a later date, may identify or adopt specific maintenance standards and if so, Tenant agrees to maintain the Premises in accordance with Port’s adopted standards; provided that: (i) Tenant shall have no obligation under this Section to perform Subsequent Horizontal Construction or Alterations or Improvements unless otherwise set forth in this Lease, and (ii) if a future maintenance standard would result in Tenant’s right to terminate

this Lease under *subsection 3.3(a)(iii)* then Port may revert to the most recently applicable maintenance standard.

9.4. Park Evaluation Report. Tenant will have a qualified professional conduct an annual inspection and evaluation of the condition of the Premises (“**Park Evaluation**”) using the then current RPD Park Evaluation Form (“**Evaluation Form**”) and submit it to Port together with the Annual Report. The qualified professional conducting the Park Evaluation will provide a summary of findings from the Park Evaluation (collectively “**Park Evaluation Report**”), which report will be submitted to Port by no later than April 1 of each year. If the Park Evaluation Report identifies a score that is ten (10) percentage points or more below the most recent Citywide average score for other public parks as reported by RPD, then Port and Tenant shall meet and confer regarding Tenant’s score(s) within forty-five (45) days following receipt of the Park Evaluation Report. Tenant shall have the right to request another Park Evaluation Report. Nothing in this section shall be interpreted to limit the Port’s rights under *Section 9.2* or *Section 25*.

9.5. Hours of Operation. The Park hours will be no less than from 6 a.m. to 10 p.m. and the restroom will be open and available to the general public no less than from 8 a.m. to 8 p.m., unless otherwise agreed to by Port in its reasonable discretion (“**Hours of Operation**”).

9.6. Public Access Generally. Access to China Basin Park will be generally available to the public for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. General public access may be modified for specified Events, as permitted by Port or as allowed under this Lease. Areas along the Bay Trail/Blue Greenway and major pedestrian and bicycle routes will remain open or will be re-routed in the event of construction, maintenance, or Events to allow for pedestrian and bicycle thru traffic and circulation.

9.7. Dogs and Other Animals. All dogs or other animals must always be under the control of its owner or companion. Dogs must be kept on-leash, except in any designated off-leash areas. Persons with dogs are responsible for removing and properly disposing of dog waste. Dog walkers are limited to eight dogs.

9.8. Temporary Structures. No trailer, tent, shack, or other outbuilding, or structure of a temporary character, will be allowed on any portion of the parks at any time, except for: (a) construction, (b) food truck and concession kiosks, or (c) in connection with public or private events, temporary exhibitions, special events, reservations, or programming.

9.9. Flags. Throughout the Term, a Port flag will fly on each of the flagpoles (“**Flagpoles**”), if any, located on the roofs of any structures and any other flagpoles located within the Premises. Port will provide each Port flag to Tenant. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port’s request. If Port determines that Tenant’s response to Port’s request to raise or lower Port flags is inadequate, then at Port’s election, Port may access the roofs or such other areas of the Premises where the Flagpoles are located to adjust Port flags without prior notice to Tenant.

9.10. Signage. Prior to Port’s approval of the CBP Sign Guidelines, Tenant will not install business signage, awnings or other exterior decoration or notices on the Premises without Port’s prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises will comply with all Laws relating thereto, including but not limited to, CBP Sign Guidelines and building permit requirements, and Tenant will obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant’s ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, will remove all sponsorship and any easily-removable sign placed by it on the Premises at the expiration or earlier termination of this Lease if so requested by Port, unless Port has expressly agreed to allow such sign(s) to remain after expiration or earlier termination of this Lease (for example, in accordance with the terms of Port’s assumption of a Sponsorship).

9.11. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant agrees to remove all graffiti from the Premises within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from Port or the Department of Public Works; provided however, if such graffiti cannot reasonably be removed within such period, Tenant will not be in default of this Lease if Tenant diligently and in good faith continues to work to remove or abate such graffiti and actually completes such removal within thirty (30) days (or other reasonable period determined by the Port). The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Public Works Code, the Planning Code, or the Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.).

9.12. Public Use, Input, and Information. The public will be welcome to freely use Premises and the amenities offered therein available on a first-come, first-served basis, subject to restrictions for certain Events and Concession Areas as described in **Sections 10 and 11**. To maintain "two way" communication with the public regarding the public's use of China Basin Park, Tenant at a minimum will do all of the following:

(a) Maintain a website that may include, but is not limited to: (i) Park maps, description of facilities and amenities, nearby attractions, retail and dining opportunities, etc.; (ii) a calendar of events and periodic public meetings hosted by Tenant; (iii) clear instructions, rates, and reservation system for reserving space for events; (iv) e-mail addresses and phone numbers where members of the public can register complaints or requests; and (v) link to Port website;

(b) Develop and maintain method for notifying neighbors of upcoming Events.

(c) At the Port's request, provide appropriate link from City websites related to parks and events to the Parks and Open Space website, facilitating a seamless experience for the public seeking information on other City parks, and events.

(d) Host at least one (1) public meeting every twelve (12) months in a meeting space accessible to the public, with noticing, agenda, public comment, and notetaking consistent with the Port's Advisory groups.

(e) Provide presentations and information to the Port Commission, as reasonably requested.

(f) Receive, respond to, and follow up on "311" calls or alerts related to the Premises.

(g) Create a hotline number for the public to contact with questions, concerns, and suggestions.

9.13. Media Communications. Tenant will not release any press releases related to the Premises without first receiving Port's advance written approval; provided, however, that Tenant may, without Port approval, (i) issue press releases regarding approved Events or other matters consistent with the Permitted Uses, (ii) send email blasts and make social media posts for marketing purposes for the Park and approved Events or other matters consistent with the Permitted Uses and to maintain communication with the public regarding the foregoing, and (iii) maintain a website pursuant to **Section 9.12(a)**.

9.14. Qualified Personnel. Tenant represents and warrants to Port that Tenant will engage qualified personnel, consultants, contractors, operators, or other service providers to perform the services as contemplated by this Lease. Tenant further represents and warrants to Port that it has (or will have acquired) all required licenses and approvals to perform the work contemplated by this Lease, and that all work performed under this Lease will be performed only by (i) Agents of Tenant, or (ii) personnel under the supervision and in the employment of the Tenant. All personnel engaged in the work will be fully qualified and will be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required.

9.15. Diversity, Equity, and Inclusion Goals. Tenant acknowledges that Port is committed to diversity, equity, and inclusion in all phases of projects on Port property. Accordingly, Tenant will comply with the Diversity, Equity, and Inclusion Plan attached as **Exhibit I ("DEI Plan")**. The DEI Plan includes goals for inclusion of small, local, and diverse Event Venue Users, Concessionaires, contractors, consultants, and other service providers for work on the Premises Plan includes goals for inclusion of small, local, and diverse Event Venue Users, Concessionaires, contractors, consultants, and other service providers for work on the Premises and for attracting diverse park and event patrons in park programming.

9.16. Annual Review of Operations. No later than May 1 of each year, Port and Tenant will meet to discuss the operation and use of the Premises during the prior year and what changes, if any, may be made going forward to improve the user experience at the Premises. Tenant's implementation of the DEI Plan during the prior year will also be included in the annual review.

9.17. BCDC Reporting. In addition to substantive regulations governing the uses and operation of the Premises, the BCDC Permit contains a requirement that the permittees thereunder submit by January 30 each year, a written annual report describing the prior year's special event program for China Basin Park and other areas within BCDC's jurisdiction (i.e., Terry Francois Boulevard and Channel Wharf). The BCDC Permit also contains a requirement that five (5) years following the date the BCDC Permit is issued or the opening of China Basin Park, whichever is later, and every five (5) years thereafter the permittees thereunder submit a sea-level rise and flooding monitoring report to BCDC. Tenant shall be responsible for preparing and submitting to BCDC the annual and five year reports described in the BCDC Permit, and Port hereby approves of the assumption of such responsibility by Tenant. Tenant shall copy Port on the submission of any reports or other communications with BCDC. Port acknowledges that Tenant shall have no obligation to perform or cause the Premises to comply with any adaptive measures that BCDC may require of the permittees as a result of reports to BCDC; provided however that the permittees may mutually use the Premises and any funds in the Mission Rock Long Term Reserve Fund to pay for or cause such compliance.

9.18. Security Cameras. Tenant may install, operate, and maintain security cameras on the Premises with Port's prior written approval.

10. EVENTS AND PROGRAMMING.

10.1. Generally. Tenant agrees and acknowledges that the primary purpose of Premises is to enrich the public experience as further described in the Parks Plan. Tenant will use commercially reasonable efforts to hold Events as permitted in the BCDC Permit and the Parks Plan.

10.2. Approvals; Notice.

(a) No more than sixty (60) and no less than thirty (30) days prior to the commencement of each month, Tenant shall submit to Port a calendar of proposed Events to take place on the Premises for the next fourteen (14) months and actual Events from the past month on a rolling basis (“**Annual Event Calendar**”). Tenant must obtain Port’s prior written approval for all large events and any medium events (each as defined in the BCDC Permit) that will last three (3) days or more, which approval shall be granted so long as: (i) the Event otherwise complies with all necessary approvals and obligations, (ii) the Event will attract people to the waterfront, (iii) the location is otherwise available with no conflict with a Civic Event, (iv) Port will not need to expend any resources (other than ordinary Port costs for event review and approval) or forgo revenue to support the Event, (v) any permits fees associated with the Event are paid in full, and (vi) the Event organizer(s) agree to and execute a form Event License that indemnifies the Port and accepts all event liability. Notwithstanding Port’s conditional approval obligation described above, Port may withhold written approval if permit fees or other costs for a prior event remain due and owing to the Port. In addition, Port and Tenant intend to define a streamlined approval process for repeat events.

(b) Tenant will obtain, or cause to be obtained, all Regulatory Approvals, including without limitation, and any necessary Port permits, for all Events. Port shall issue an annual master event license agreement (“**Master Event License**”) for Events identified on the Approved Annual Calendar of Port-approved Events (“**Approved Annual Calendar**”). For all Events not listed on an Approved Annual Calendar but still within the limitations of the BCDC Permit, Tenant may request as-needed Event Licenses (“**As-Needed Event Licenses**”) if Port approval for such Event is required, subject to procedures set forth in **Section 10.4**. Requests for As-Needed Event Licenses will be submitted at least seven (7) calendar days prior to the proposed Event. Port will consider requests for unexpected, as-needed Event Licenses submitted fewer than seven (7) calendar days prior to the proposed Event. In the event that a Bay Area sports team wins a championship event, Port will not unreasonably withhold approval for a medium to large Event (as defined in the BCDC Permit) related to such championship, even if submitted on less than seven (7) days’ notice.

(c) Tenant will be entitled to issue individual Event licenses (each, an “**Event License**”) to third parties for (i) all events on the Approved Annual Calendar, (ii) events for which Tenant has obtained an As-Needed Event License, and (iii) Events that do not require Port approval.

(d) Tenant will be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property, including, but not limited to musical or other performance rights, in connection with all Events. All Events must comply with the Port’s Zero Waste Policy for Special Events.

10.3. Other Approvals.

(a) Tenant will, at its sole cost and expense, obtain (or cause to be obtained) all other necessary permits and approvals issued by other governmental agencies. Proof of permits and approvals for all medium to large Events must be submitted to the Port three (3) days prior to the commencement of each Event (or as early as practicable, but under no circumstances after commencement of the Event). Evidence of permits and approvals for all Events shall be kept on file by Tenant for Port’s review upon request. Upon Tenant’s failure to submit to the Port the necessary permits and approvals by the required dates the Port may, at its

sole discretion, disallow any specific Event or Events. Examples of other permits and approvals which may be necessary for certain Events include, but are not limited to:

- (i) Building/Encroachment Permit from Port Building Department;
- (ii) Temporary Change of Occupancy Permit from Port Building Department;
- (iii) Fire Permit, Fire Watch and Temporary Place of Assembly Permit from the San Francisco Fire Department (SFFD);
- (iv) Security Plan from the San Francisco Police Department (SFPD);
- (v) Traffic Plan from the San Francisco Police Department (SFPD);
- (vi) Ride Share Drop Off and Pick Up Plan from the San Francisco Police Department (SFPD);
- (vii) Emergency Medical Plan from the Department of Public Health (DPH);
- (viii) Alcoholic Beverage Control License (ABC) from the California Alcohol Beverage Commission;
- (ix) Food Permit from the Department of Public Health (DPH);
- (x) Entertainment Related Permit(s) from the San Francisco Entertainment Commission;
- (xi) Any other permit or approval deemed necessary by the Port of San Francisco and/or any City Agency.

(b) Tenant must cause the removal of all items brought onto the Premises in connection with an Event at the end of such Event, including but not limited to: temporary structures, tables, chairs, stages, audio/visual, lighting, rigging, cameras, speakers, trusses, pipe and drape.

10.4. Event License. Except as otherwise provided in **Section 10.7**, each Event License issued by Tenant must satisfy the following conditions:

- (a) Event Venue Users represent and warrant to Tenant that they are not subject to an active debarment or suspension order from the City;
- (b) Event Venue Users represent and warrant to Tenant that they have not in the last ten (10) years, and are not currently, subject to an eviction or other enforcement order prosecuted by or for the Port;
- (c) Each Event License subjects the Event Venue Users to a cross-default provision with any contract with the Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion;
- (d) Each Event License includes indemnification and waiver of claims clauses from the Event Venue User benefitting the Port that are similar to the provisions in **Section 23** (Indemnity and Exculpation);
- (e) Each Event License states that Event Venue Users must comply with all applicable Laws and every applicable condition of this Lease;
- (f) Each Event License includes a provision where the Event Venue Users expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;

(g) Each Event License includes a provision where the Event Venue Users expressly agrees to report the Event License to the County Assessor in accordance with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute);

(h) Each Event License is subject to every applicable term and condition of this Lease and is consistent with the DEI Plan attached hereto as *Exhibit I* and the Parks Plan attached hereto as *Exhibit F*;

(i) Each Event License is made available for Port review without redaction within thirty (30) days of execution;

(j) Each Event License includes the date(s) of the Event and if necessary, the days prior to and after such Event that are needed for set up and breakdown;

(k) Each Event License includes a description of the Event Venue being used;

(l) Each Event License includes insurance provisions requiring that all of the Event Venue User's liability and other insurance policies name "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES;**"

(m) Each Event License includes Tenant's right to terminate the Event License without charge or any liability in the event either (i) the Premises is required by Port, City, or other state agencies due to emergencies (such as natural disasters, wars, insurgencies, or terrorist attacks), or (ii) this Lease is terminated for any reason; and

(n) Each Event License includes the Event Venue User's agreement to comply with the Noise and Light Restrictions and the Good Neighbor Policy set forth in *Sections 10.8* and *10.9*.

10.5. Event Promoters. Tenant may enter into agreements with other parties, each of whom will be deemed to be Tenant's Agent, to use the Premises for Events, provided that such use complies with all the terms and conditions of this Lease. A breach by Tenant's Agent of the terms and conditions of this Lease constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents under this Lease is aware of and complies with all applicable provisions of this Lease and Tenant acknowledges that it will be subject to default and termination provisions under this Lease if its Agent fails to comply with the applicable terms and conditions of this Lease.

10.6. Port's Right to Use Premises for Civic Events.

(a) **Civic Events.** Subject to *Section 10.6(b)*, Port will have the right to use all or any portion of the Premises for Civic Events from time to time throughout the Term in accordance with this Section if it has not yet been reserved. Port will provide notice to Tenant of its intent to use all or any portion of the Premises for a Civic Event no more than sixteen (16) months and, generally, no less than seven (7) days prior to the Civic Event. Tenant will consider requests for unexpected, as-needed Civic Events submitted fewer than seven (7) calendar days prior to the proposed Civic Event. Port shall have the right to use the Premises (or such portion) without being subject to any charge; provided however, users of the Premises in accordance with this Section will still be subject to payment of Tenant's reasonable, out-of-pocket costs for security, janitorial and other reasonable out-of-pocket costs arising solely and directly from the applicable Civic Event.

"**Civic Events**" mean any event that the Port's Executive Director or the Executive Director's designee determines serves the policy goals of the Port and/or civic goals of the City and County of San Francisco, the State of California, or the U.S. Government, and that expressly brings people to the San Francisco waterfront.

(b) **Reservation for Civic Events.** Subject to *Section 10.6(a)*, Port may reserve all or any portion of the Premises for up to twelve (12) days in any calendar year, which

includes any set-up or break-down days. The twelve (12) available days may be used for one Civic Event or multiple Civic Events, as determined by Port in its sole discretion. Once Port reserves a specific space for a specific date or dates for one or more Civic Events, Tenant will have no right to relocate, terminate, or re-schedule use of such space on such specific date(s) for the Civic Event without the Port's written consent.

(c) **Port Commission Approval Required.** Port Commission approval is required for any reduction in the number of days that the Premises may be reserved without charge for Civic Events.

10.7. Lighting, Electrical, and Sound. It is critical that the setup of the electrical, sound, and/or lighting system (the "**LES Systems**") for any Event does not adversely impact any of the facility systems within the Premises. The LES Systems for any Event must therefore be installed, operated, and removed by skilled personnel familiar and knowledgeable with the facility systems within the space to be used. Accordingly, Tenant will ensure that the parties installing, operating, and removing the LES Systems are skilled, familiar and knowledgeable with the facility systems within each site.

10.8. Noise and Light Restrictions. Tenant will comply with, and use commercially reasonable efforts to cause all users to (a) comply with the San Francisco Police Code Sections 49 and 2909 regarding noise, as each may be amended or superseded, (b) ensure that no noise or sound from Events can be heard from outside the Premises after 10 pm and before 7 am, and (c) ensure that no additional light from Events is emitted from the Premises and visible to the west after 10 pm and before 5 am; provided, however, that Tenant shall be entitled to operate security lighting twenty-four (24) hours each day.

10.9. Good Neighbor Policy and DEI Plan. Tenant will comply, and use commercially reasonable efforts to cause all users to comply, with the Good Neighbor Policy attached hereto as **Exhibit J** and the DEI Plan attached hereto as **Exhibit I**. Tenant will comply with the DEI Plan with regard to the number and type of Events and Event Venue Users throughout the Term.

10.10. BCDC Permit. Notwithstanding anything to the contrary in this Lease, Events will be subject to the limitations set forth in the BCDC Permit and in the event of an inconsistency between this Lease and the BCDC Permit, the terms of the BCDC Permit, as it may be revised or amended, will supersede and govern.

11. CONCESSION OPERATIONS.

11.1. Active Edge Retail. Subject to the terms of this **Section 11.1** and the conditions in **Section 11.3**, Tenant has the exclusive right to grant licenses to ground-floor tenants of adjacent buildings (each, a "**Retail Licensee**") and enter into license and use agreements (each, an "**Active Edge Agreement**") with such Retail Licensee for the Active Edge Areas within the Premises, as depicted on [**Exhibit XX**].

11.2. Concession Operations. Subject to the terms of this **Section 11.2** and the conditions in **Section 11.3**, Tenant has the exclusive right to grant licenses to vendors, promoters or operators (each, a "**Concessionaire**") and enter into license and use agreements (each, a "**Concession Agreement**") with such Concessionaires for the Concession Areas within the Premises.

As used herein, "**Concession Areas**" means those areas within the Property that are subject to a Concession Agreement. Concession Areas may include up to two (2) restaurant or performance venue spaces not to exceed 6,000 square feet and up to four (4) kiosks of up to 200 square feet each, and one (1) human powered watercraft rental kiosk not to exceed 200 square feet; provided that if additional concession areas are permitted pursuant to the BCDC Permit and the Design Controls, Port may, in its sole discretion, expand the Concession Area to include all or a portion of the additional concession area. Tenant will select appropriate Concessionaires for Concession Areas, and will consider alignment with the greater Retail Strategy of the Mission

Rock Development and Tenant's DEI Plan in selecting Concessionaires. The rates and fees charged under Concession Agreements will be reasonable and customary as specifically determined by, or negotiated with, an independent third party.

11.3. Retail and Concession Conditions. Each Retail Licensee and Active Edge Agreement, and each Concessionaire and Concession Agreement are subject to, and shall be null and void unless compliant with, the following conditions:

- (a) Retail Licensee and/or Concessionaire is not subject to an active debarment or suspension order from the City;
- (b) Retail Licensee and/or Concessionaire has not in the last ten (10) years, and is not currently, subject to an eviction or other enforcement order prosecuted by or for the Port;
- (c) Each Active Edge Agreement and Concession Agreement subjects the Retail Licensee and/or Concessionaire to a cross-default provision with any contract with the Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion;
- (d) Each Active Edge Agreement and Concession Agreement includes indemnification and waiver of claims clauses similar to the provisions in **Section 23** (Indemnity and Exculpation);
- (e) Each Active Edge Agreement and Concession Agreement states that Retail Licensee and/or Concessionaires must comply with all applicable Laws and every applicable condition of this Lease;
- (f) Each Active Edge Agreement and Concession Agreement includes a provision where the Retail Licensee and/or Concessionaire expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;
- (g) Each Active Edge Agreement and Concession Agreement includes a provision where the Retail Licensee and/or Concessionaire expressly agrees to report the Active Edge Agreement and/or Concession Agreement to the County Assessor in accordance with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute);
- (h) Each Active Edge Agreement and Concession Agreement includes insurance provisions requiring that the Retail Licensee and/or Concessionaire's liability and other insurance policies name "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES**";
- (i) Each Active Edge Agreement and Concession Agreement is consistent with this Lease and Tenant's DEI Plan attached hereto as **Exhibit I** and the Mission Rock Parks Plan attached hereto as **Exhibit F**; and
- (j) Each Active Edge Agreement and Concession Agreement with a term of one year or more is fully disclosed without redaction to the Port within thirty (30) days of execution.
- (k) Tenant must receive no less than the applicable parameter rate (rent or fee) in effect at the time of execution of each Active Edge Agreement and Concession Agreement; except for Concessionaires that operate less than five (5) days per year within the Premises for temporary, community-oriented offerings such as farmers' markets, small craft markets, and food truck services. For the avoidance of doubt, the Parameter Rental Rate Schedule for Fiscal Year 2023-2024 to be applied to each Active Edge Agreement is identified within the "Open Land, Pier and Airspace Rates" category as "Improved Land & Sidewalk (including outdoor dining)."

11.4. Notice. Unless Port agrees to later advance notice, Tenant must provide at least thirty (30) calendar days written advance notice to Port of its desire to enter into any Concession Agreement or Active Edge Agreement with a term of one year or more for use of all or any portion of the Premises.

12. SPONSORSHIPS.

12.1. Generally. Tenant agrees and acknowledges that the primary use of the Premises is to enrich the public experience as further described in the Parks Plan. The Parties agree and acknowledge that Sponsorships will be a revenue source to support the operations, maintenance, and programming of the Premises.

(a) Sponsorship Requirements and Approvals.

(i) All Sponsorships shall comply with Port's Sponsorship Standards attached hereto as *Schedule 12.1(a)*.

(ii) Except for Temporary Signage, Tenant shall not install any Physical Element, or Major Physical Element related to any Sponsorship without obtaining the Port Director's approval with respect to the physical location of such Physical Element or Major Physical Element; provided such approval shall not be unreasonably withheld, conditioned or delayed. The Port shall have no approval right with respect to the name(s) or other content contained on the Physical Element or Major Physical Element except as set forth in this *Section 12*.

(iii) Unless the Port enters into a Recognition Agreement with respect to a Sponsorship Agreement, each Sponsorship Agreement shall include a right for the Port to terminate such agreement upon expiration or earlier termination of this Lease; provided, however that upon termination of this Lease, Port shall reasonably consider its assumption of each then-existing Sponsorship Agreement. For the avoidance of doubt, Sponsorship Agreements may also include a right for the sponsor to terminate such Sponsorship Agreement upon termination of this Lease.

(iv) Port and its representatives will have the right, from time to time, to examine and/or cause a complete audit (but not to make copies, unless in connection with discovery in the course of litigation) of any or all sponsorship agreements entered into by Tenant. The Parties shall be responsible for their own costs associated with routine examinations and routine audits.

(v) All Physical Elements and Major Physical Elements related to any sponsorship must either (1) comply with, or (2) receive an express waiver or exemption from, Mission Rock Design Controls, any other relevant Port design guidelines, and building permit requirements. Tenant must deliver to Port a written document identifying the proposed Major Physical Element(s) of a sponsorship at least sixty (60) days prior to the proposed installation or placement, for Port's approval, which approval will not be unreasonably withheld.

(vi) For the avoidance of doubt and without limiting the Port's reasonable discretion, the Parties agree that it will be reasonable for the Port to withhold approval if, the proposed sponsor: (A) is barred or suspended from bidding or entering into contracts with the City, (B) is a Port tenant that is not in good standing, or if (C) the installation or placement of a Major Physical Element regarding the sponsorship would violate any City Law or policy.

(vii) All signage and Physical Elements of sponsorship must be promptly removed from the Premises on or prior to expiration of the sponsorship agreement or the applicable event or programming.

(b) Preapproved Sponsorships. Tenant must provide Port with no less than fifteen (15) calendar days (or such shorter time as permitted pursuant to this Lease or by the Port

for Tenant to give notice of an Event) prior notice before installing or placing Temporary Signage on the Premises, but shall not be required to obtain any other approval from Port for Temporary Signage. **“Temporary Signage”** shall mean signage used in connection with an Event that (i) is temporary and/or seasonal in nature, and (ii) is used solely for information or notification purposes. The term of Temporary Signage cannot exceed six (6) months and may not be renewed or extended. Temporary Signage includes, without limitation, weekly programming A-frame sign(s), temporary public art, banners, non-affixed and movable signage, and other promotional materials.

(c) **Sponsorships subject to Port Director Approval.** A **“Sponsorship subject to Director discretion”** is a sponsorship that: (i) includes a Major Physical Element, and (ii) will be for a term of not less than six (6) months and no greater than ten (10) years, and (iii) requires the approval of the Port Director or the Port Director’s designee. No Major Physical Element may be installed or placed in connection with a Sponsorship subject to Director discretion unless and until Tenant has received the Port Director’s written approval. Tenant must submit to Port for approval the material terms of the sponsorship agreement at least sixty (60) calendar days prior to the proposed installation or placement of any related Major Physical Element. Upon receipt of the material terms of the sponsorship agreement, Port will have thirty (30) days to notify Tenant of the Port Director’s approval, disapproval, or any proposed conditions of approval for the sponsorship agreement. The Port Director may not unreasonably withhold its consent to the proposed sponsorship.

(d) **Sponsorships subject to Port Commission Approval.** A **“Sponsorship subject to Commission discretion”** is a sponsorship that: (i) includes a Major Physical Element, (ii) will be for a term greater than ten (10) years, and (iii) requires the approval of the Port Commission. No Major Physical Element may be installed or placed in connection with a Sponsorship subject to Commission discretion unless and until Tenant has received Port Commission approval. Tenant shall submit to the Port, for Port Commission deliberation, a recognition and signage plan for each proposed sponsorship subject to Commission discretion at least one hundred twenty (120) calendar days prior to the proposed installation or placement of any related Major Physical Element. Port staff may suggest revisions or modifications to the proposal, which Tenant may accept or reject in Tenant’s sole discretion, prior to presentation to the Port Commission for deliberation. Port will have reasonable time to place the items on the Port Commission calendar for deliberation. Notwithstanding anything to the contrary in this Lease, no Sponsorship subject to Commission discretion may be for a term that extends beyond the Term unless the Port has entered an applicable Recognition Agreement.

12.2. Other Approvals. Tenant will, at its sole cost and expense, obtain all other necessary Regulatory Approvals for the installation or placement of Physical Elements and/or Major Physical Elements. Proof of Regulatory Approvals, to the extent required, will be submitted to the Port for review not less than ten (10) Business Days prior to the first day of installation or placement; provided however, if Tenant receives any necessary Regulatory Approvals less than fifteen (15) calendar days prior to installation due to no fault of Tenant or applicable sponsor, then Tenant shall submit such Regulatory Approval to Port within one (1) Business Day of receipt. Upon Tenant’s failure to submit to Port the necessary Regulatory Approval(s) by the required date, the Port may, in its sole discretion, reject or disallow any installation or placement. Examples of necessary Regulatory Approvals include, but are not limited to:

- (a) Building/Encroachment Permit from Port Building Department;
- (b) Temporary Change of Occupancy Permit from Port Building Department;
- (c) Any other permit or approval deemed reasonably necessary by Port, BCDC, and/or any other Regulatory or City Agency.

12.3. Sponsorship Consultants. Tenant may enter into agreements with other parties (including affiliates of Tenant), each of whom will be deemed to be Tenant's Agent, to solicit sponsorships, provided that all Sponsorship Agreements comply with all the terms and conditions of this Lease. A breach of any term of this Lease by Tenant's Agent constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents under this Lease are aware of and comply with all of the provisions of this Lease and Tenant acknowledges that it will be subject to default and termination provisions under this Lease if its Agents fail to comply with the terms and conditions of this Lease. Sponsorship consultant fees or commissions must be commercially reasonable and may not exceed eighteen percent (18%) of Gross Sponsorship Revenue from the sponsorship agreement.

12.4. Revenues from Sponsorships. Other than payment of consultant fees in accordance with *Section 12.3*, all Sponsorship Revenue (other than Capital Improvement Sponsorships) will be applied to the operation and maintenance of the Park in accordance with *Section 5.5*.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

During the Term, Tenant, at Tenant's sole cost and expense, promptly will comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and will comply with all Laws relating to Tenant's specific use of the Premises and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the Parties; provided that if compliance with Laws requires any repairs, restoration, alterations, installations, improvements or additions to any Improvements or to the Premises ("**Compliance Improvements**"), such Compliance Improvements shall be subject to *Section 15*. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises and Tenant's activities and operations conducted thereon, to be in compliance with the ADA; provided that if compliance with the ADA requires Compliance Improvements, such Compliance Improvements shall be subject to *Section 15*. Tenant will be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations strictly complies with all requirements of the ADA. Tenant shall obtain Port's prior written approval for any use or occupancy of the Premises that may trigger a requirement to remove barriers or perform other work to any Port property outside the Premises to comply with the ADA.

The Parties acknowledge and agree that Tenant's obligation to comply with all Laws (subject to *Section 15*) as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 13 will include, subject to Section 15, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this *Section 13* will comply with the provisions of *Section 17*. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, will relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Except as expressly set forth in this Lease, Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

14. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.

14.1. *Port Acting as Owner of Property.* Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and, subject to **Section 8.1**, to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals, including but not limited to the terms and conditions described in **Section 8**. Examples of Port actions as a Regulatory Agency include Port issuance of building, encroachment and other construction-related permits, and the Chief Harbor Engineer's actions to protect public health and safety.

14.2. *Regulatory Approvals.* Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "**Changes**") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

(a) Tenant will be solely responsible for obtaining any Regulatory Approvals, and Tenant will not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval will be borne solely and exclusively by Tenant. Port, at no cost to Port, will reasonably cooperate with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Lease. Port may elect in Port's sole discretion to participate as co-permittee for one or more Regulatory Approvals. Tenant will be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could adversely affect use or occupancy of the Premises or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe (other than fees that would be reimbursed by Tenant), unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

(b) Except as otherwise provided herein, Port will provide Tenant with its approval or disapproval of any matter requiring Port's approval in writing to Tenant as soon as reasonably practical after Tenant's written request and (i) not later than fifteen (15) calendar days for event-related requests, or (ii) not later than twenty-five (25) calendar days for all other requests, as calculated from Port's receipt of Tenant's complete written request; provided however that if Port's Executive Director, in consultation with the City Attorney's Office, reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, then the approval or disapproval shall be offered for consideration at the first Port Commission and subsequent Board of Supervisors hearings after receipt of Tenant's written request, subject to notice requirements and reasonable staff preparation time. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this section.

(c) Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval will be promptly paid and discharged by Tenant, and Port will have no liability, monetary or otherwise, for any fines and penalties. Tenant in its sole discretion has the right to appeal or contest any condition in any

manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. No Port Approval will limit Tenant's obligation to pay all costs of complying with any conditions or restrictions. To the fullest extent permitted by Law, Tenant agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval, except to the extent that such Claim arises solely from the willful acts or omissions of Port acting in its proprietary capacity.

(d) Without limiting the terms and conditions of **Sections 14.1 and 14.2**, by signing this Lease, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City will in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Premises. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

14.3. Compliance with City's Risk Manager's Requirements. Tenant will faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises, are commercially reasonable (as indicated by prudent commercial practices of other landlords), and are either generally applicable to parks and open spaces or are specific to a unique feature of the Premises.

15. MAINTENANCE AND REPAIRS.

15.1. Tenant Maintenance and Repair Obligations.

(a) Tenant will at all times during the Term, starting on the Commencement Date and at its sole cost and expense:

(i) Maintain, repair, and replace the Premises in good order and condition equal to or better than other first-class public waterfront parks and open space projects located in California, including completing any Capital Repairs and Replacements; and

(ii) Complete any Compliance Improvements in accordance with all applicable Laws; and

(iii) Complete any repairs or restoration to any Improvements or to the Premises if the Improvements or Premises is damaged by fire or other casualty ("**Casualty Improvements**") in accordance with **Section 21**.

Tenant's obligations under this **subsection 15.1(a)** shall be promptly undertaken and pursued with due diligence, subject to **subsection 15.1(c)**, below.

(b) Port will not be obligated to make any repairs, replacement, or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. In the event that Tenant, its Agents or Invitees cause any

damage to the Premises or any other property within Port's jurisdiction, Tenant will be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant will promptly reimburse Port therefor.

(c) Notwithstanding the obligations described in this **Section 15.1**, the Parties agree that such obligation may be extinguished upon termination of this Lease under **subsection 3.3(a)(iii)**. Prior to termination under **subsection 3.3(a)(iii)**, Tenant may submit a written notice to Port stating that Tenant has insufficient funds to complete necessary Capital Repairs and Replacements, Compliance Improvements, and/or Casualty Improvements. Port will review and respond to such written notice in accordance with **Section 14.2**. In its sole and absolute discretion and without any further obligation, Port may either provide additional funds to Tenant for Tenant's completion of, or cause the completion of, such necessary Capital Repairs and Replacements, Compliance Improvements, and/or Casualty Improvements. If Port does not provide additional funds or cause the completion of necessary Capital Repairs and Replacements, Tenant may:

(i) discontinue public access to the affected area (i.e., partially close a portion of the Premises) until such time that Port and Tenant cause the completion of the Compliance Improvement or agree to install alternative Improvements; or

(ii) pursue termination of this Lease under **subsection 3.3(a)(iii)**.

(d) Tenant will not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, including, without limitation, the Port Building Code or of any rule or regulation of Port, without first obtaining a permit therefor.

(e) Tenant may, but is not obligated to, complete Subsequent Horizontal Construction and any additional Improvements that did not exist on the Commencement Date, subject to Port's prior written approval for Major Improvements.

15.2. Port's Right to Inspect. Without limiting **Section 28** below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain such Premises and Improvements as described in **Section 15.1**. Except in case of emergency, Port shall provide reasonable prior notice to inspect any area of the Premises that is not readily accessible to the general public.

15.3. Port's Right to Repair. In the event Tenant fails to promptly commence efforts to maintain the Premises or repair any damage to the Premises as described in **Section 15.1**, Port may maintain or repair the same at Tenant's sole cost and expense and Tenant will promptly reimburse Port therefor (unless Tenant is contesting the Maintenance Notice in good faith). Except in the event of an emergency, Port will first provide no less than fourteen (14) calendar days prior notice to Tenant before commencing any maintenance or repair pursuant to this Section. If Tenant does not: (a) commence maintenance or repair of or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the same, or (b) exercise its rights under **Section 3.3, subsection 15.1(c)**, or **Section 21.1**, within such fourteen (14) calendar day period, then Port may proceed to take the required action, unless (c) within that fourteen (14) calendar day period Tenant provides Port written notice identifying (i) a conflict with a previously planned event or Sponsorship that would interfere with the non-emergency maintenance or repair and (ii) the reasonable extension of time necessary to commence the non-emergency maintenance or repair to avoid such conflict. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant will pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" will include the cost of materials and installation, but will exclude any costs associated with design, such as architectural fees. With respect to any work

where the total Hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200).

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with **Section 15 ("Maintenance Notice")**, Tenant will pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with **Section 15**, then Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section will be due within thirty (30) days following delivery of the applicable Maintenance Notice.

For purposes of this Lease, the term "ordinary wear and tear" will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

15.4. Acts of Nature. Nothing contained herein will require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision will not affect any obligation to make repairs to the Premises pursuant to **Section 21** in the event of any damage or destruction of the Premises.

16. UTILITIES AND SERVICES.

16.1. Utilities. Tenant will make arrangements and will pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant; provided that Port shall take such actions as are reasonably necessary to enable Tenant to obtain Utilities. Tenant will procure all electricity and water for potable uses for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Tenant, Tenant may seek another provider.

Subject to **Section 15.1**, Tenant will be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant will coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements.

Concurrent with the execution of this Lease, Port will assign, and Tenant will accept the assignment of, the WPA between Port and Mission Rock Utilities to Tenant. During the Term, Tenant must purchase water for non-potable use on the Premises from Mission Rock Utilities pursuant to the WPA between Tenant and Mission Rock Utilities. The WPA is effective as of the Commencement Date and will be effective throughout the Term. Tenant will be solely responsible for all purchaser obligations under the WPA and Port will have no responsibility, obligation or liability related to the WPA; provided however, if one or more Specified Related Agreements terminate, then Port agrees to promptly compensate Tenant for the costs of non-

potable water used in the areas previously covered by the terminated Specified Related Agreement. Port has no liability or obligation to provide any water for the Premises.

Aside from any infrastructure that was previously permitted and approved by Port, Tenant will not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises using current in excess of 240 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises, including without limitation, electronic data processing machines. If Tenant requires electric current in excess of that usually furnished or supplied for the Premises, Tenant will first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof will be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone or internet wiring and equipment) will become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port will not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption will constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Sections 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability. The foregoing does not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

In the event any Law imposes mandatory controls on Port, the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, such compliance and the making of such alterations will in no event entitle Tenant to any damages, relieve Tenant of the obligation to perform each of its covenants hereunder, or constitute or be construed as a constructive or other eviction of Tenant.

16.2. Services. Tenant will make arrangements and will pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, security service, janitorial service and extermination service.

16.3. Energy Consumption Disclosure. Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

17. IMPROVEMENTS AND ALTERATIONS.

17.1. Port Consent Required.

(a) Tenant may make Alterations or Improvements to the Premises without Port's written consent to the extent any such Alteration or Improvement does not require a Regulatory Approval. Tenant will not make nor cause or suffer to be made, any Alterations or Improvements to the Premises that require a Regulatory Approval (i) without the prior written

consent of Port, which consent will not be unreasonably withheld; provided, however, that Port will have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises or the facility systems or would adversely affect public access to, or the use or appearance of, the Premises (other than as reasonably necessary during performance of such Alterations or Improvements and only on a temporary basis), and (ii) until Tenant will have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) As a condition to giving consent to any Alterations or Improvements to be performed by Tenant that require Port's prior written consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees as the City's Risk Manager may reasonably deem necessary in connection with the Alteration or Improvement, including any guarantees required by Law such as payment and performance bonds from Tenant's Contractor(s) naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement. The Parties agree that if no such guarantee is required by Law, then Tenant may comply with the financial guarantee obligation by establishing a restricted account containing funds from existing reserves sufficient to complete the Alteration or Improvement and to cover contingencies as reasonably determined by Port.

(c) Except in the event of an emergency, at least thirty (30) days before commencing any Alterations or Improvements to the Premises that requires a Regulatory Approval, Tenant will notify Port. Tenant's notice will be accompanied by final construction documents for the Alterations or Improvements, if applicable. Port will have the right to object to any of the Alterations or Improvements requiring Port's consent within thirty (30) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's consent within the thirty-(30) day period will be deemed Port's approval of the Alterations or Improvements.

(d) None of the following will constitute Alterations or Improvements requiring Port's consent, unless the installation will affect the structure of the building or Premises: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; and (ii) interior painting or installation of carpeting.

17.2. Construction Requirements. All Alterations and Improvements to the Premises made by or on behalf of Tenant will be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements will be performed in a good and workmanlike manner and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises. All Alterations and Improvements that require a Port permit or Port consent shall be performed in accordance with plans and specifications previously approved by Port.

(b) All Alterations and Improvements will be performed at the sole cost and expense of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from

the performance of its Work. Tenant will undertake commercially reasonable measures to minimize damage and the risk of injury, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work will be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant will erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the completion of any Work described in this Section that requires a building permit (but excluding temporary structures), Tenant will furnish to Port one reproducible “as built” drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within ninety (90) days after completion of the Improvements, Port, after giving notice to Tenant will have the right, but not the obligation, to cause the preparation by an architect of Port’s choice of “as-built” drawings, at Tenant’s sole cost, to be paid by Tenant to Port within thirty (30) days after Port’s request therefor.

(e) Without limiting **Section 19** below (Hazardous Materials), in the event that asbestos-containing materials (“ACM”) are determined to exist in or about the Premises, Tenant will ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant will distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work will be performed without Port’s prior written consent in each instance.

(f) Tenant, on behalf of itself and its Agents or Invitees, will comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees will give to Port three (3) Business Days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, will not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter (“HEPA”) local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port’s prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port’s prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this **subsection 17.2(f)**, lead-based paint is “disturbed or removed” if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

17.3. Port Proposed Alterations. If Port, in its proprietary capacity, desires any Alterations to the Premises during the Term, Port shall notify Tenant of such proposed Alterations (the “**Port Proposed Alterations**”), and Port and Tenant shall meet and confer to

discuss the proposal and determine whether the Port Proposed Alterations conflict with any previously-approved Sponsorship Agreement or Event. Tenant shall complete such Port Proposed Alterations if the cost of such Port Proposed Alterations are expressly included in the Budget, or if the Port Proposed Alterations are approved by Tenant (such approval not to be unreasonably withheld if the Port Proposed Alterations do not conflict with any previously-approved Sponsorship or medium to large event), and if the cost can be covered by another identified funding source. Port shall not complete any Port Proposed Alterations without Tenant's prior approval; provided however that this Section shall not limit Port's rights under *Section 15.3*.

17.4. Improvements Part of Realty. Except as set forth in *Section 17.5* below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant (but excluding temporary structures, trade fixtures and other personal property of Tenant and its subtenants other than Port) will immediately upon construction or installation become part of the realty owned by Port and will, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in *Section 29* (Surrender).

17.5. Removal of Improvements.

(a) Prior to the Expiration Date or earlier termination of this Lease, Port may give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements completed by or on behalf of Tenant and that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant will be required to remove and relocate or demolish and remove from the Premises in accordance with *Section 29*. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port will deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant will be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal. Tenant will promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant will reimburse Port within ten (10) Business Days after demand therefor.

(b) Prior to commencing any Alterations or constructing new Improvements, Tenant may request that Port identify whether such Alteration or Improvement will be designated as Tenant's Property and, therefore, subject to removal, relocation, or demolition and removal from the Premises in accordance with this section and *Section 29*. If Port provides written notice that an Alteration or Improvement will not be designated as Tenant's Property (and therefore potentially subject to removal at Port's election), then Port may not later deliver a Notice of Removal so long as such Alteration or Improvement is maintained in accordance with *Section 15*.

17.6. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements for which Port's consent was required without Port's prior written consent or without complying with *Section 17.2*, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant will pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of *Section 17* will survive the expiration or earlier termination of this Lease.

17.7. All-Gender Toilet Facilities. If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An “**all-gender toilet facility**” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “**extensive renovations**” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port’s Property Manager for guidance.

18. LIENS.

Tenant will keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant will not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, Port will have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it will deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys’ fees) will be payable to Port by Tenant within ten (10) days following demand by Port. Port will have the right to post on the Premises any notices that Port may deem proper for the protection of Port, and the Premises from mechanics’ and materialmen’s liens. Tenant will give to Port at least fifteen (15) days’ prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify Port, City and their respective Agents from and against any Claims for mechanic’s, materialmen’s or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

Without limiting the foregoing, Tenant will not create, permit or suffer any liens or encumbrances affecting any portion of the Premises or Port’s interest therein or under this Lease, other than (i) this Lease, permitted subleases, and liens or other matters of record as of the Effective Date and (ii) liens for non-delinquent taxes, assessments, liens, levies, fees, charges or expenses of every description, levied, assessed, confirmed or imposed by a governmental entity on the Premises.

19. HAZARDOUS MATERIALS.

19.1. Requirements for Handling. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, over, or under the Premises, subject only to the following exceptions and provided that Handling is at all times in full compliance with all Environmental Laws: (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, (b) janitorial, office, cooking, or landscaping supplies or materials in such amounts as are customarily used for purposes similar to the Permitted Uses, (c) standard building materials and equipment that do not contain asbestos or asbestos containing materials, lead, or polychlorinated biphenyl (PCBs) for use in connection with Alterations or Improvements in accordance with **Section 17**, and (d) Hazardous Materials that are or have been Handled for Remediation purposes under the jurisdiction of and as permitted by an Environmental Regulatory Agency.

19.2. Tenant Responsibility. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

(a) will not permit any Hazardous Materials (other than Pre-Existing Hazardous Materials) to be present in, on, over, or under the Premises except as permitted under **Section 19.1**;

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

19.3. Tenant's Environmental Condition Notification Requirements.

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under **Section 19.1**, Handled, in, on, over, or under the Premises, or emanating from the Premises, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under the Premises, or from any vehicle or vessel that Tenant or its Agents or Invitees use on the Premises during Tenant's occupancy of the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, over, or under the Premises or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency with respect to the Premises;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the Premises, or from any vehicles or vessels Tenant, or its Agents and Invitees uses on the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises during Tenant's occupancy of the Premises;

(iv) Any Hazardous Material Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the Premises, or from any vehicles or vessels Tenant, or its Agents and Invitees uses on the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an

Environmental Regulatory Action concerning the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with an explanation of the basis for any claim of privilege and summary information regarding the parties to, the quantity and extent of, and the subject of such communications.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

19.4. Requirement to Remediate.

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying Port in accordance with **subsection 19.3(a)**, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or caused by Tenant or Tenant's Agent's or Invitees Handling of Hazardous Materials during Tenant's occupancy of any or all of the Premises, provided Tenant may take any immediate actions to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition and will then provide notice to Port in accordance with **subsection 19.3(a)**. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by the applicable Regulatory Agency.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost and in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted. Port shall approve or disapprove of such Hazardous Materials Remediation plan promptly, but in any event within thirty (30) days, after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's reasonable judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date.

19.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under **Section 28** (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

19.6. Notification of Asbestos. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in Schedule 1 attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in **Schedule 1** attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of **Section 19.6** hereof and the notice or report attached as **Schedule 1** hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of Claims set forth in **Section 23** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and the removal or non-removal by Port of all or a portion of the asbestos in the Premises, will not, however, (a) entitle Tenant to any Claim, (b) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (c) constitute or be construed as a constructive or other eviction of Tenant.

Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (y) asbestos-related enforcement actions related to the Premises, including both administrative or judicial proceedings, and (z) any Claims related to the

Premises arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

19.7. Notification of Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises. Disturbance or removal of lead is regulated by, among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and Port Building Code § 3424.

Tenant agrees that its waiver of Claims set forth in **Section 23** below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises, will not, however, (a) entitle Tenant to any Claim, (b) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (c) constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (y) lead-related enforcement actions related to the Premises, including both administrative or judicial proceedings, and (z) any Claims related to the Premises arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

19.8. Storm Water Pollution Prevention.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, and shall comply with the Mission Rock District Storm Water Pollution Prevention Plan ("SWPPP"), which is attached as **Exhibit K**.

(b) Post-Construction Requirements. In addition to requiring compliance with the permit requirements under Subsection (a), Tenant will comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

19.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in **Schedule 1** attached hereto, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in **Schedule 19.9**, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 78700 and related Laws. Tenant must disclose the information contained in this **Section 19.9** to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 78700 as well as the penalties that apply for failure to meet such obligations.

19.10. Survival. The provisions of this **Section 19** (other than **Sections 19.6** and **19.7**) will survive the expiration or earlier termination of this Lease, provided however that (a) Tenant's obligations under **Section 19.4** shall survive only with respect to Remediation

obligations that first arise during the Term or are caused by Tenant or Tenant's Agents carrying out Tenant's surviving obligations under *Section 19.4* and this section after the Term, and (b) Tenant's obligations under *Sections 19.1, 19.2, 19.3, and 19.8* shall survive only with respect to Tenant and Tenant's Agents who are carrying out Tenant's surviving obligations under *Section 19.4* and this section.

20. INSURANCE.

20.1. Required Insurance Coverage. Tenant, at its sole cost and expense, will maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) Commercial General Liability Insurance. Comprehensive or "Commercial General Liability" insurance, with limits not less than Forty Million Dollars (\$40,000,000.00) each occurrence combined single limit for bodily injury (including death) and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards; personal and advertising liability, and the products-completed operations. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Liquor Liability and Food Products Liability. If Tenant has (or is required under Laws to have) a liquor license and is selling or distributing or allows (irrespective of whether Tenant has a liquor license) alcoholic beverages on the Premises, or is selling or distributing food products on the Premises, then liquor liability coverage with limits not less than Five Million Dollars (\$5,000,000) each occurrence, and food products liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence, and Tenant will require any Operator, Agent, or Subtenant (including licensees or concessionaires) who has (or is required under Laws to have) a liquor license and who is selling, allowing, or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Tenant's policies.

(c) Automobile Insurance. Tenant will maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Tenant's use and occupancy of, and activity at, the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than the limits required for commercial general liability insurance for each occurrence combined single limit.

(d) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant will maintain, or require by written contract that its remediation contractor or remediation consultant will maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Five Million Dollars (\$5,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of Port (such approval not to be unreasonably withheld, conditioned or delayed).

(e) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations,

(i) Tenant will cause Tenant's Agents (including Tenant's contractor) to carry such insurance coverage and limits as will be reasonably approved by Port and the City's Risk Manager, taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant will carry "Builder's All Risk" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the

completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(iii) Tenant will require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000.00) each claim and Ten Million Dollars (\$10,000,000) in the aggregate, with respect to all professional services provided to Tenant therefor.

(f) Special Events/Participants. For any Event at the Premises, Tenant, Event Venue Users, Concessionaires or Agents, as applicable, must maintain Special Events/Participants Liability Insurance (GL) acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(g) Workers' Compensation; Employer's Liability. Tenant will carry (if applicable) and will require Tenant's Agents to carry Worker's Compensation Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each (if any).

(h) Personal Property Insurance. Tenant, at its sole cost and expense, will procure and maintain on all of Tenant's Property and Alterations, in, on, or about the Premises, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant's sole discretion, for the replacement of Tenant's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant will have no interest in the proceeds of such personal property insurance. Port will have no responsibility or obligation to maintain insurance or replace Tenant's Property, Alterations, or any Improvements regardless of cause of loss.

(i) Sexual Molestation. For any Event where minors are present, sexual molestation and abuse coverage with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(j) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, in connection with the annual budget process Port may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be: (i) required by Law, (ii) reasonably required by the City's Risk Manager, or (iii) as is reasonably prudent for private operators of public parks and open spaces similar in size, character, age and location as the Premises with respect to risks comparable to those associated with the use of the Premises.

20.2. Claims-Made Policies. If any of the insurance required in *Section 20.1* is provided under a claims-made form of policy, Tenant will maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims will be covered by such claims-made policies.

20.3. Annual Aggregate Limits. If any of the insurance required in *Section 20.1* is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit will be double the occurrence limits specified herein.

20.4. Payment of Premiums. Tenant will pay the premiums for maintaining all required insurance.

20.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a “**Waiving Party**”) each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises; provided, the failure to obtain any such endorsement will not affect the above waiver.

20.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Tenant hereunder will contain a cross-liability clause, will name as additional insureds by written endorsement the “**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, COMMISSIONERS EMPLOYEES AND AGENTS,**” will be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and will provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company’s liability.

(b) All insurance policies required to be maintained by Tenant hereunder will be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant’s compliance with this Section will in no way relieve or decrease Tenant’s liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder will be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port.

(d) Tenant will deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant’s broker will complete the insurance questionnaire and submit all required documentation. Tenant will, upon Port’s request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

21. DAMAGE AND DESTRUCTION.

21.1. Damage and Destruction. If the Premises is damaged by fire or other casualty, then all repairs and restoration of the Premises arising from such casualty shall constitute Casualty Improvements. Tenant will repair the same provided that (a) funds for such Casualty Improvements are expressly included in the Budget, or available to Tenant from insurance proceeds, or otherwise identified for such purpose (while allowing Tenant to operate and maintain the Premises in accordance with **Section 15** of this Lease), and (b) that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease will remain in full force and effect. In the event such conditions are not satisfied, Tenant may:

(i) discontinue public access to the affected area until such time that Port and Tenant cause the completion of the Casualty Improvement or agree to install alternative Improvements; or

- (ii) pursue termination of this Lease under *subsection 3.3(a)(iii)*.

Tenant will use commercially reasonable efforts to notify Port within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, Tenant will have the option to notify Port of: (x) Tenant's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, in which event this Lease will continue in full force and effect; or (y) discontinue public access to the affected area until such time that Port and Tenant cause the completion of the Casualty Improvement or agree to install alternative Improvements; or (z) Tenant's election to terminate this Lease in accordance with *subsection 3.3(a)(iii)* as of the date specified in such notice, which date will be not less than thirty (30) nor more than sixty (60) days after notice is given by Tenant.

Notwithstanding anything to the contrary in this Lease, Tenant will not be entitled to terminate this Lease in the event the damage or destruction is attributable to any gross negligence or willful misconduct of Tenant or its Agents. Port may choose to, but will never be required to, repair the Premises. In no event will Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant.

21.2. Waiver. Port and Tenant intend that the provisions of *Section 21* govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

22. EMINENT DOMAIN.

22.1. General. If all or part of the Premises will be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease will terminate as to any portion of the Premises so taken or conveyed on the Date of Taking.

22.2. Partial Takings. If (a) a part of the Premises will be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease will remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking will be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice will specify the date of termination, which will be not less than thirty (30) nor more than sixty (60) days after the date of notice.

22.3. Total Taking. If Tenant's leasehold estate is taken under the power of eminent domain or conveyance in lieu thereof, this Lease will terminate as of the Date of Taking.

22.4. Temporary Takings. Notwithstanding anything to the contrary contained in *Section 22*, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease will remain unaffected thereby and Tenant will continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease.

22.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to *Section 22.3*, or pursuant to an election under *Section 22.2*, then: (i) Tenant's obligation to pay Rent will continue up until the date of termination and thereafter will cease, and (ii) Port will be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this

Lease and any Improvements Pertaining to the Realty), and Tenant will have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant will receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of **Section 22** will govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

23. INDEMNITY AND EXCULPATION.

23.1. General Indemnity. Subject to **Section 23.6**, Tenant will Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "Indemnified Parties") from, and will defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant or Concessionaire, or loss or damage to or destruction of any property occurring in, on, over, or under the Premises during Tenant's occupancy, (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of **Section 24**, (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, Invitees, or Concessionaires during Tenant's occupancy, (d) any construction or other work on the Premises permitted by Tenant during Tenant's occupancy, or (e) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Concessionaires, in, on, over, or under the Premises.

23.2. Hazardous Materials Indemnity.

(a) Subject to **Section 23.6**, in addition to its obligations under **Section 23.1**, Tenant agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition existing or occurring during the Term or pursuant to Tenant's obligations under **Section 19.10**, and (ii) Tenant's or Tenant's Agent's Exacerbation of any Hazardous Material Condition during the Term and any occupancy of the Premises by Tenant after the Term.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) actual sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) reasonable attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within five (5) Business Days after Port's payment demand and evidence reasonably supporting the demand.

23.3. Scope of Indemnities. Subject to **Section 23.6**, the Indemnification obligations of Tenant set forth in this Lease will be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease will be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of

Tenant set forth in this Lease will exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant will begin from the first notice that any claim or demand is or may be made and will continue at all times thereafter until finally resolved.

23.4. Exculpation and Waiver. To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective systems, (v) construction defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes in, on, over, or under the Premises to the fullest extent permitted by law, but excluding any Claims arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease will remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the 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.

Initials:

Name:

Title:

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the

release at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

23.5. Not Limited by Insurance. Tenant's Indemnification obligations set forth in *Section 23.1* and all of Tenant's other Indemnification obligations set forth in this Lease will not be limited by the amount of insurance proceeds that are available pursuant to the insurance coverage that Tenant is required to maintain pursuant to this Lease.

23.6. Exclusions from Indemnifications, Waivers, and Releases.

(a) Nothing in this *Section 23* relieves the Indemnified Parties from liability, nor will the Indemnities set forth in *Section 23.1*, (General Indemnity), *Section 23.2* (Hazardous Materials Indemnity), or the defense obligations set forth in *Sections 23.3* (Scope of Indemnities), or any other indemnification obligation of Tenant under this Lease extend to Claims:

(i) to the extent such Claim(s) exceed the limit defined in subsection (a) of *Section 20.1* for Tenant's Commercial General Liability insurance, as applicable at the time of the Claim; or

(ii) caused by the gross negligence or willful misconduct of the Indemnified Parties; or

(iii) from third parties' claims for exposure prior to the Commencement Date to either Pre-Existing Hazardous Materials or to Hazardous Materials.

(b) If it is reasonable for an Indemnified Party to assert that a claim for Indemnification under this *Section 23* is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under this *Section 23*. Notwithstanding the foregoing, if an Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under this *Section 23* will not be effective unless such Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant. For the avoidance of doubt, Tenant shall have no obligation to obtain a pollution liability insurance policy.

23.7. Survival. The provisions of *Section 23* will survive the expiration or earlier termination of this Lease.

24. ASSIGNMENT PROHIBITED.

Port is entering into this Lease in reliance upon Tenant's stated and unique expertise, skill and experience. Accordingly, except for any ancillary agreements entered into in accordance with *Sections 10.4* and *11*, Tenant will not assign, transfer or encumber its interest in this Lease or any other right, privilege or license conferred by this Lease, either in whole or in part, without obtaining the prior written consent of Port, which Port may give or withhold in its sole and absolute discretion; provided that Sponsorship Agreements entered into in accordance with *Section 12* shall not violate this provision. Any assignment or encumbrance without Port's consent will be voidable and, at Port's election, will constitute a material default under this Lease. A sale or transfer of the stock, assets or other equitable interests of Tenant that has the effect of a material change in Tenant's ownership, determined by Port in its sole discretion, will constitute a transfer of this Lease requiring Port's prior written approval pursuant to this Section.

25. DEFAULT BY TENANT.

Any of the following will constitute an event of default (the “**Event of Default**”) by Tenant hereunder:

(a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of five (5) Business Days following written notice from Port; or

(b) abandonment or vacation of the Premises by Tenant, which abandonment or vacation is not cured within seventy-two (72) hours of written notice from Port of Port’s belief of Tenant’s abandonment or vacation; or

(c) failure of Tenant or its Agents to use the Premises solely for the Permitted Use, as determined by Port in its reasonable discretion, and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that if such default cannot reasonably be cured within such twenty-four (24) hours, Tenant will not be in default of this Lease if Tenant commences to cure the default within such period and diligently and in good faith continues to cure the default; or

(d) failure of Tenant to take commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses by Persons other than Tenant or Tenant’s Agents, in conjunction with the occurrence of such Prohibited Uses, and such failure continues for a period of ten (10) days following written notice from Port; or

(e) an Event of Default under the WPA (as defined under the WPA), which Event of Default continues without cure for five (5) Business Days after written notice from Port; provided, however, if such Event of Default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the Event of Default within such five (5) day period and diligently and in good faith continues to cure the Event of Default, provided, however, without limitation of the foregoing, the Parties agree for purposes of this subsection that Tenant’s internal meetings to determine the path to cure such Event of Default will be deemed to be a commencement of cure; or

(f) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by **Section 35**, and Tenant’s failure to cure the foregoing default within five (5) days following written notice from Port; or

(g) an assignment or transfer of this Lease or sublease or license of the Premises by Tenant contrary to the provisions of **Sections 10, 11, or 24**, and such sublease, license, assignment, or transfer continues without cure for a period of five (5) Business Days after written notice by Port. For the avoidance of doubt, Port will notify Tenant of its conclusion that an assignment, transfer, sublease, or license is in violation of **Sections 10, 11, or 24**, which conclusion may be revised after meeting and conferring with Tenant regarding the assignment, transfer, sublease, or license as well as Tenant’s actions in response to notice of Port’s conclusion; or

(h) failure by Tenant to maintain any insurance required to be maintained by Tenant under this Lease, or failure by Tenant or Tenant’s broker to provide evidence of required insurance, or if any such insurance will be canceled or terminated or will expire or be reduced or materially changed, except as permitted in this Lease, and Tenant’s or Tenant’s broker’s failure to either maintain, or to deliver evidence of, such coverage or failure to reinstate such coverage, all within three (3) Business Days following written notice from Port; or

(i) failure by Tenant to comply with the provisions of **Section 19**, above, and Tenant’s failure to cure the foregoing default within one (1) Business Day following written notice from Port; provided however, if such default cannot reasonably be cured within such one (1) Business Day, then Tenant will not be in default of this Lease if Tenant commences to cure

the default within such one (1) Business Day (which commencement includes Tenant's internal meeting that determines the path to cure such default), and diligently and in good faith continues to cure the default, provided further, Tenant will have no more than six (6) months to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days; or

(j) failure by Tenant to discharge any lien or encumbrance placed on the Premises or any part thereof in violation of this Lease, and such violation or failure continues without cure for a period of thirty (30) days following Tenant's knowledge of such lien or encumbrance, including but not limited to written notice from Port specifying the nature of such violation or failure; or

(k) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this **Section 25**, and such failure continues without cure for a period of thirty (30) days after written notice by Port that specifies the nature of such failure; provided that if such failure is not capable of cure within such thirty (30) day period, Tenant will have a reasonable period to complete such cure if Tenant promptly undertakes action to cure and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port; provided further, Tenant will have no more than ninety (90) days to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days. ; or

(l) Tenant becomes bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within one hundred eighty (180) days thereafter; or

(m) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within one hundred eighty (180) days; or

(n) this Lease or any estate of Tenant under this Lease will be levied upon by any attachment or execution and such attachment is not stayed or lifted within one hundred eighty (180) days; and

(o) without limiting the provisions of **subsections 25(c), 25(d), or 25(i)**, or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; provided however, if such default cannot reasonably be cured within such forty-eight (48) hour period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such forty-eight (48) hour period and diligently and in good faith continues to cure the default, provided further, Tenant will have no more than thirty (30) days to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days.

26. PORT'S REMEDIES.

Upon an Event of Default by Tenant, Port will, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

26.1. *Intentionally Omitted.*

26.2. *Termination of Tenant's Right to Possession.* Port may terminate Tenant's right to possession of the Premises by giving written notice thereof if Port has the right to terminate

this Lease pursuant to **Section 3.3(b)**. No act by Port other than giving notice of termination to Tenant will terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease will not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could be reasonably avoided; plus

(d) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although Port will have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "**worth at the time of award**" of the amounts referred to in **subsections 26.2(a)** and **26.2(b)** above will be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "**worth at the time of award**" of the amount referred to in **subsection 26.2(c)** above will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

26.3. Intentionally Omitted.

26.4. Port's Right to Cure Tenant's Default. At any time after Tenant commits or permits an Event of Default (and after any applicable notice and cure period has lapsed), Port may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's Event of Default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port will be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date will bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

26.5. No Accord and Satisfaction. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease will be deemed to be other than "on account" of the earliest Rent due; nor will any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) will be deemed to waive any claim which Tenant may be

entitled to assert with regard to the making of such payment or the amount thereof, and all such payments will be without prejudice to any rights Tenant may have with respect thereto, so long as such payment is clearly identified as having been made “under protest” (or words of similar import).

26.6. Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any Event of Default of Tenant hereunder.

26.7. Intentionally Omitted.

26.8. Remedies Not Exclusive. The remedies set forth in **Section 26** are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law or in equity. Tenant’s obligations under **Section 26** will survive any termination of this Lease.

27. LITIGATION EXPENSES; ATTORNEYS’ FEES.

27.1. Litigation Expenses. The Prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party’s performance or alleged non-performance under this Lease, will be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys’ fees, which will be payable whether or not such action is prosecuted to judgment. “**Prevailing party**” within the meaning of this Section will include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

27.2. Appeals. Attorneys’ fees under this Section will include attorneys’ fees and all other reasonable costs and expenses incurred in connection with any appeal.

27.3. City Attorney. For purposes of this Lease, reasonable fees of attorneys of the City’s Office of the City Attorney will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

28. PORT’S ENTRY ON PREMISES.

28.1. Entry for Inspection. Port and its authorized Agents will have the right to enter the Premises without notice at any time during normal business hours of generally recognized Business Days, provided that Tenant or Tenant’s Agents are present on the Premises (except in the event of an emergency where notice is not practical), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease. Port agrees to give Tenant reasonable prior notice of Port’s entering on the Premises except in an emergency for the purposes set forth in this **Section 28**. Such notice shall be not less than twenty-four (24) hours’ prior notice, except in the event of emergency. Tenant shall have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Port’s entry onto public areas of the Premises.

28.2. General Entry. In addition to its rights pursuant to **Section 28.1** above, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice to Tenant for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or to a Horizontal Construction Area, or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(d) To obtain environmental samples and perform equipment and facility testing.

28.3. Emergency Entry. Port may enter the Premises at any time, without notice, in the event of an emergency. Port will have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, will not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

28.4. No Liability. Port will not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Port's entry onto the Premises as provided in **Section 28** or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof; provided however that: (a) Tenant's waiver excludes damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives, and (b) Port shall at its own cost and expense, and as soon as reasonably practicable, repair such damage and/or restore the Premises to substantially the same condition prior to the occurrence of damage caused by Port's or Port's Agent's non-emergency entry pursuant to **Sections 9.17, 28.1, and 28.2**.

28.5. Nondisturbance. Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in **Section 28** in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant and its Event Venue Users, Concessionaries, Agents, and Invitees.

29. SURRENDER AND QUITCLAIM.

29.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant will surrender to Port the Premises in the condition required by and consistent with **Section 15** (subject to ordinary wear and tear, and so long as Tenant is in compliance with **Sections 21 and 22**). Ordinary wear and tear will not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises will be surrendered clean, free of debris, waste, and Hazardous Materials (other than Pre-Existing Hazardous Materials), and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the Commencement Date and any other encumbrances created or approved in writing by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost will remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements will remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this **Section 29** and **Section 17.5**, Tenant will continue to have the Indemnification obligations under **Section 23** as if this Lease had not expired until Tenant surrenders the Premises in accordance with this Section and Tenant will further Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

Only a written notice from Port to Tenant confirming surrender of the Premises by Tenant will constitute surrender of the Premises, whether upon expiration or earlier termination of this Lease.

29.2. Quitclaim. Upon the expiration or earlier termination of this Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and will be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any portion that Port agrees are to remain part of the Premises.

29.3. Abandoned Property. Any items, including Tenant's Property, not removed by Tenant as required herein will be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant will be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

29.4. Tenant Assets and Funds. Upon expiration or early termination of this Lease, Tenant shall comply with **Section 5.6**.

29.5. Bay Trail Restoration Obligation. No less than ninety (90) days prior to the expiration or earlier termination of this Lease, and within ninety (90) days of Port's notice to Tenant terminating this Lease, Tenant shall remove all pavers installed on that certain portion of the Bay Trail pursuant to Port Permit Number B-2025-0002 (and any subsequent or successor permits approved by Tenant authorizing the installation, repair, maintenance, and/or removal or relocation of sponsored pavers) and shall restore the Bay Trail in accordance with the China Basin Park As-Built Drawings on file with the Port and associated with Permit Number B-2021-0061; provided however, that Port shall waive Tenant's obligation to perform under this **Section 29.5** so long as Port has received adequate assurance, as determined by Port in its sole and absolute discretion, of compliance with this Bay Trail restoration obligation by an approved third-party.

29.6. Survival. Tenant's obligation under this **Section 29** will survive the expiration or earlier termination of this Lease.

30. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises.

In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, provided that such right will not be exercised so as to disturb or otherwise interfere with Tenant's leasehold estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by **Section 21**. In no event will Port be liable to Tenant for any Claims arising from the State's exercise of its rights nor will such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

31. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision will be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease will have the meanings ascribed to them in the cited ordinance.

31.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Contracts.** Tenant will include in all Event Licenses, Concession Agreements, Sponsorship Agreements and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of **subsection 31.1(a)** above. In addition, Tenant will incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and will require all subtenants and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the Lease Commencement Date, Tenant will execute and deliver to Port the “Nondiscrimination in Contracts and Benefits” form approved by the CMD.

(e) Penalties. Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

31.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a “small business” by the City pursuant to Section 12Q.3(e) of the HCAO, it will have no obligation to comply with *subsection 31.2(a)* above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City will have the remedies set forth in Section 12Q.5(f). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant will require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant will notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublease or Contract and will certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant will be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant will not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant will keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) Business Days of any request, Tenant will provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

31.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance will be a default of this Lease.

31.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

31.5. Indoor Air Quality. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

31.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

31.7. Prohibition of Alcoholic Beverages Advertising. Unless otherwise permitted by Law, Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" will be defined as set forth in California Business and Professions Code Section 23004, and will not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing

alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

31.8. *Restrictions on the Use of Pesticides.* Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Tenant will not use or apply or allow the use or application of any pesticides on the Premises, and will not contract with any party to provide pest abatement or control services to the Premises, without first receiving City’s written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant’s primary IPM contact person with the City. Tenant will comply, and will require all of Tenant’s contractors to comply, with the IPM plan approved by the City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant’s staff or contractors. If Tenant or Tenant’s contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application will be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

31.9. *MacBride Principles Northern Ireland.* Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

31.10. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant will not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant will be liable for liquidated damages for each violation in any amount equal to the contractor’s net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

31.11. *Preservative-Treated Wood Containing Arsenic.* Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “preservative-treated wood containing arsenic” will mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited

to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” will mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

31.12. Notification of Limitations on Contributions. If this Lease is subject to the approval by City’s Board of Supervisors, Mayor, or other elected official, the provisions of this **Section 31.12** will apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant’s board of directors, and Tenant’s principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant’s bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this **Section 31.12** applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

31.13. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors’ bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

31.14. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant will immediately notify the Port.

31.15. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

31.16. Prevailing Wages and Working Conditions. Tenant will comply with all applicable prevailing wage requirements, including but not limited to any such requirements in

the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section will have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant will require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant will include and will require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section will constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant will also pay, and will require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

31.17. Local Hire. Any undefined, initially-capitalized term used in this Section will have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant will contact City’s Office of Economic Workforce and Development (“**OEWD**”) to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant will include, and will require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract will name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant will cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant’s failure to comply with its obligations under this Section will constitute

a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

31.18. *Public Transit Information.* Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

31.19. *Food Service and Packaging Waste Reduction Ordinance.* Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts will not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

31.20. *San Francisco Bottled Water Ordinance.* Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

31.21. *Consideration Of Criminal History In Hiring And Employment Decisions.*

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12T**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and will require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and subtenants will not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants will not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants will not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants will post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

31.22. Prevailing Wage Rate Requirement For Theatrical Workers. City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this Section will have the meanings provided in Section 21.C4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(a) Tenant will comply with the obligations in San Francisco Administrative Code Section 21C.4, and will require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City will have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Lease.

(b) The City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(c) Tenant will provide to the City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

For current Prevailing Wage rates, see the Office of Labor Standard Enforcement's website or call the Office of Labor Standard Enforcement at 415-554-6235.

31.23. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant will not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and

beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be deemed a material breach of this Lease. Without limiting Port’s other rights and remedies under this Lease, Port will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

31.24. *Tenant’s Compliance with City Business and Tax Regulations Code.*

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this **Section 31.24** to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

31.25. *Consideration of Salary History.* Tenant will comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant will not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

32. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party’s mailing address in the Basic Lease Information, unless superseded by a notice of a change in that party’s mailing address for notices, given to the other party in the manner provided above, or by information provided by Tenant in Tenant’s written response to Port’s written request for such information.

All notices under this Lease will be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the Business Day following the Business Day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the Business Day after the Business Day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

33. MISCELLANEOUS PROVISIONS.

33.1. *California Law; Venue.* This Lease is governed by, and will be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease will be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

33.2. *Entire Agreement.* This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease will be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

33.3. *Amendments.* No amendment of this Lease or any part thereof will be valid unless it is in writing and signed by all of the parties hereto.

33.4. *Severability.* If any provision of this Lease or the application thereof to any person, entity or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, will not be affected thereby, and each other provision of this Lease will be valid and be enforceable to the fullest extent permitted by law unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

33.5. *Interpretation of Lease.*

(a) Unless otherwise specifically stated in this Lease, where a Party has a right of approval or consent, such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

(b) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees but excludes members of the general public unless the context requires or specifically stated otherwise.

(c) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(d) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(e) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during

the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(f) The terms “include,” “included,” “including” and “such as” or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase “without limitation” or “but not limited to.”

(g) This Lease has been negotiated at arm’s length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(h) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(i) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of “waive” applies to “waiver,” “waivers,” “waived,” “waiving,” etc.).

(j) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a Business Day, the date by which the act must be performed will be extended to the next Business Day.

33.6. Successors. The terms, covenants, agreements and conditions set forth in this Lease will bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their successors and assigns.

33.7. Real Estate Broker’s Fees. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no other claims or rights for brokerage commissions or finder’s fees in connection with the transactions contemplated by this Lease; provided that Tenant may use and compensate brokers or finders to identify subtenants and Concessionaires. If any person brings a claim for a commission or finder’s fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the Port or Tenant and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns (“Tenant Parties”), as applicable, from, and hold the Indemnified Parties or Tenant Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) that the Port or Tenant Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the termination of this Lease.

33.8. Counterparts. For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, will constitute one complete Lease. This Lease may be executed in any number of counterparts each of which will be deemed to be an original and all of which will constitute one and the same Lease.

33.9. Authority. Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's reasonable request, Tenant will provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

33.10. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach will constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval will not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and will not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

33.11. Time is of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

33.12. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease will be cumulative, except as may otherwise be provided herein.

33.13. Survival of Indemnities. Termination or expiration of this Lease will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease (but solely as to matters that occurred during the Term or Tenant's use or occupancy of the Premises), the ability to collect any sums due, nor will it affect any provision of this Lease that expressly states it will survive termination or expiration hereof.

33.14. Relationship of the Parties. Port is not, and none of the provisions in this Lease will be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party will act as the agent of the other party in any respect hereunder. This Lease is not intended nor will it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

33.15. No Recording. Tenant will not record this Lease or any memorandum hereof in the Official Records.

33.16. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "**Concession**") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

34. LIMITATION ON DAMAGES.

34.1. No Recourse Beyond Value of Premises. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and Port will not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant will look solely to the fair market value of Port's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant

expressly waives all other liability. Before filing suit for an alleged default by Port, Tenant will give Port notice and reasonable time to cure the alleged default.

34.2. *Non-Liability of City Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port will be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or Port under this Lease. Under no circumstances will Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

34.3. *Limitation on Port's Liability Upon Transfer.* In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer; provided however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's (or subsequent transferor's) possession immediately prior to the transfer that are dedicated to or for the Premises, and such transferee has assumed all liability for such funds.

34.4. *Waiver of Indirect or Consequential Damages.* As a material part of the consideration for this Lease, Tenant shall not be liable to Port, and Port shall not seek and Port hereby waives any claims against Tenant, for any punitive, indirect, consequential or special damages (including lost profits) due to the acts or omissions of Tenant under this Lease. Tenant would not be willing to enter into this Lease in the absence of a complete waiver of liability for punitive, indirect, consequential and special damages (including lost profits) due to the acts or omissions of Tenant, and Port expressly assumes the risk resulting from such waiver.

34.5. *Nonliability of Tenant's Members, Officers, Partners, Shareholders, Directors, Agents, and Employees.* No direct or indirect affiliate of Tenant, or member, officer, partner, shareholder, director, board member, agent, or employee of Tenant or a direct or indirect affiliate of Tenant, shall be personally liable to Port, or any successor, for any default by Tenant under this Lease, and Port agrees that it shall have no recourse against any such Person with respect to any obligation of Tenant under this Lease, or for any amount that may become due Port or its successor or for any obligation or claim based upon this Lease. No personal judgment shall be sought or obtained against any of the foregoing Persons in connection with this Lease. Notwithstanding the foregoing, this **Section 34.5** shall in no way supersede federal, state, or municipal law (including but not limited to Chapter 28 of the San Francisco Administrative Code, the San Francisco Campaign and Governmental Conduct Code, and the San Francisco Police Code).

35. ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, will execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as **Exhibit L**.

Port shall execute, acknowledge and deliver to Tenant within fifteen (15) days after written request from Tenant, a certificate stating to the best of Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), and (b) whether or not, to the knowledge of Port, there are then-existing defaults under this Lease (and if so, specifying the

same). In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto.

36. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS WILL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

37. DEFINITIONS.

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"Active Edge Areas" is defined in *Section 11.1*.

"Additional Rent" or **"Rent"** means all sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to *Section 4*.

"ADA" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"Agents" when used with reference to either party to this Lease or any other person means the officers, directors, employees, agents, commissioners, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"Alterations" means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

"Annual Event Calendar" is defined in *Section 10.2*.

"Annual Reconciliation" is defined in *Section 5.4*.

"Annual Report" is defined in *Section 4.3*.

"Audit Period" is defined in *Section 5.7*.

"BCDC" means the San Francisco Bay Conservation and Development Commission.

"BCDC Permit" means Permit No. 2017.004.02 issued by BCDC, as amended from time to time.

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents

used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor.

"Budget" is defined in *Section 5.2(a)*.

"Business Day" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

"Capital Expenses" means expenses that are incurred in acquiring or upgrading physical assets with an anticipated useful life of greater than five (5) years.

"Capital Needs Amount" is defined in *Section 5.6(b)*.

"Capital Repairs and Replacements" is defined in *Section 5.6(b)*.

"Capital Improvement Sponsorships" means any Sponsorship revenue received by Tenant which is designated for the construction or maintenance of specified capital improvements.

"CASp" is defined in *Section 2.3*.

"Casualty Improvements" is defined in *Section 15.1*.

"CBP Sign Guidelines" means a master signage plan for China Basin Park, mutually agreed to by Port and Tenant.

"City" means the City and County of San Francisco, a municipal corporation.

"Civic Events" is defined in *Section 10.7*.

"Claims" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date on which the Term commences as specified in the Basic Lease Information.

"Compliance Improvements" is defined in *Section 15.1*.

"Commission" means the San Francisco Port Commission.

"Concessionaire" is defined in *Section 11*.

"Concession Agreement" is defined in *Section 11*.

"Concession Area" is defined in *subsection 11.3(i)*.

"Concession Operations" means all the various duties, obligations, and operations set forth in *Section 11* related to and in connection with Concession Agreements.

"Concession Revenues" means any revenues received by Tenant as a result of Concession Operations.

"Contingent Services Special Tax" is defined in the RMA.

"Core Benefits" is defined in *subsection 31.1(c)*.

"County Assessor" means the Assess-Recorder of the City and County of San Francisco.

"CPI" means the Consumer Price Index for All Urban Consumers, Series ID CUURS49BSA0, as published by the U.S. Department of Labor, Bureau of Labor Statistics, applicable to San Francisco, California (or similar successor Series ID or index).

“Date of Taking” means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

“DDA” is defined in the preamble to this Lease.

“DEI Plan” is defined in *Section 9.14*.

“Design Controls” means the Design for Development for Mission Rock approved by the Commission and the San Francisco Planning Commission.

“Donation” means a tax-deductible donation, gift, or contribution received by Tenant for the management, operation, maintenance, event planning, repair, replacement or improvement of the Premises consistent with this Lease.

“Encroachment Area” is defined in *subsection 2.5(a)*.

“Encroachment Area Charge” is defined in *subsection 2.5(a)*.

“Environmental Laws” means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises. Environmental Laws include the Risk Management Plan, Mission Bay Area, San Francisco, California as approved by the Regional Board on May 11, 1999, as amended and as interpreted by Regulatory Agencies with jurisdiction (**“RMP”**), deed restrictions recorded against the Premises and the Site Mitigation Plan approved by the San Francisco Department of Health, all as presently in effect or as further amended during the Term of this Lease.

“Environmental Regulatory Action” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release, Exacerbation or discovery of Hazardous Materials, including both administrative and judicial proceedings.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“Environmental Regulatory Approval” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

“Event Operations” means all the various duties, obligations, and operations set forth in *Section [x]* related to and in connection with Events.

“Event Revenues” means any revenues received by Tenant as a result of Event Operations.

“Events” include, but are not limited to, conferences, promotions, trade shows, meetings, exhibitions, conventions, public and private gatherings, parties, weddings, receptions, and Civic Events.

“Event Venue” means, with respect to any Event, that portion of the Premises designated for use by the Event Venue User in an Event License.

“Event License” is defined in *Section 9.3*.

“Event Venue User” means the Person that is a party to the applicable Event License and the Person using the Event Venue for a particular Event (other than a Civic Event) described in such Event License.

“Exacerbate” or **“Exacerbating”** when used with respect to Hazardous Materials means any act or omission that (i) increases the quantity or concentration of Hazardous Materials in the affected area, (ii) causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or (iii) otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not constitute **“Exacerbation.”** Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant’s operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. **“Exacerbation”** has a correlating meaning.

“Expiration Date” means the date on which the Term expires as specified in the Basic Lease Information.

“Event of Default” is defined in *Section 25*.

“financial statements” mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

“fiscal year” means the period beginning on January 1 of any year and ending on December 31 of such year.

“Flagpoles” is defined in *Section 9.8*.

“Gross Revenues” means, collectively, gross Concession Revenues, Event Revenues, Sponsorship Revenues, any payments received by Tenant pursuant to the Master CC&Rs, and any other revenues received by Tenant related to the Premises.

“Habitual Late Payer” means Tenant has received (a) at least two (2) notices of monetary default, or (b) at least three (3) notices of default within a twelve (12) month period.

“Handle” or **“Handling”** means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

“Hard costs” is defined in *Section 15.3*.

“Hazardous Material” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“Hazardous Material Claim” means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence (other than the un-Exacerbated presence of Pre-Existing Hazardous Materials) or Release or Exacerbation of any Hazardous Materials, including, without limitation, losses based in common law. Hazardous Material Claims include, without limitation, Investigation and

Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence (other than the un-Exacerbated presence of Pre-Existing Hazardous Materials), Release, or threatened Release of Hazardous Materials in, on, over or under the Premises, or from any vehicles or vessels Tenant, or its Agents and Invitees uses on the Premises during Tenant's occupancy of the Premises.

"Horizontal Developer" means Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns with respect to the Master Lease).

"Horizontal Development Costs" is defined in the Financing Plan to the DDA.

"Horizontal Improvements" is defined in the Appendix to the DDA.

"Hours of Operation" is defined in *Section 9.5*.

"Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping); provided that, for the avoidance of doubt, Subsequent Horizontal Construction shall not constitute Improvements unless and until the land on which such Subsequent Horizontal Construction are located has been added back or otherwise included in the Premises in accordance with *Section 2.2*, as applicable.

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

"Indemnified Parties" is defined in *Section 23.1*.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever. **"Indemnification"** and **"Indemnity"** have correlating meanings.

"Initial Budget" is defined in *Section 5.1*.

"Interest Rate" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitees" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, including members of the public.

"IPM" is defined in *Section 31.8*.

"IPM Ordinance" is defined in *Section 31.8*.

“Late Charge” means a fee of one hundred dollars (\$100.00).

“Law” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require Tenant’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Premises, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

“Lease” is defined in the preamble to this Lease.

“LES Systems” is defined in *Section 10.8*.

“Maintenance Notice” is defined in *Section 15.3*.

“Maintenance Reserve Account” is defined in *Section 5.5*.

“Major Physical Element” means: (a) any Physical Element that individually or collectively equals or exceeds five square feet, regardless of medium, that requires Port approval for installation pursuant to this Lease, and (b) any Physical Element that emits or projects light if either the source or projection equals or exceeds two square feet. For the avoidance of doubt, multiple Physical Elements grouped, placed, or installed together shall constitute a Major Physical Element. For example, an individual tile, brick, or placard that otherwise constitutes a Physical Element that does not equal or exceed the five square feet shall be deemed a Major Physical Element if one or more additional tiles, bricks, or placards are proposed for concurrent or subsequent adjacent installation and they, collectively, equal or exceed the five square feet.

“Master Lease” means that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time).

“Master Association” shall mean the Master Association as defined in the Master Declaration.

“Master Declaration” is defined in the preamble to this Lease.

“Maximum Contingent Services Special Tax Revenues” is defined in the RMA.

“Mission Rock Long Term Reserve Fund” is defined in *subsection 5.6(c)*.

“Mission Rock STD” means (i) the STD as defined in the RMA, and (ii) any areas which are contemplated for potential annexation into the Mission Rock STD pursuant to the terms of the RMA, regardless of whether or not such areas have been annexed.

“Notice of Removal” is defined in *Section 17.4*.

“Notice to Cease Prohibited Use” is defined in *Section 8.3*.

“Notice to Vacate” is defined in *subsection 2.5(a)*.

“Official Records” means the official records of the City and County of San Francisco.

“Operating Expenses” means expenses relating to the Premises other than Capital Expenses, and shall be accounted for separate and apart from the operating expenses of other areas managed by Tenant within the Mission Rock STD.

“Operating Expense Fluctuations” is defined in *subsection 5.6(a)*.

“Operating Reserve Account” is defined in *subsection 5.6(a)*.

“Park Evaluation” is defined in *Section 9.3*.

“Park Evaluation Report” is defined in *Section 9.3*.

“Parks Plan” is defined in *Section 9.1*.

“Permitted Contingent Services Special Tax Levy Amount” is defined in *Section 4.2*.

“Person” means any natural person, corporation, limited liability entity, partnership, unincorporated association, joint venture, or governmental or other political subdivision or agency.

“Physical Element” means any permanent or quasi-permanent feature or component that is (a) in, on, over, or under the Premises that (b) advertises, displays, includes, or identifies a brand, logo, image, mark, name, or slogan, or otherwise communicates for or on behalf of the parties to a Sponsorship, regardless of its method of manifestation, and includes physical and digital media and projections.

“Port” means the San Francisco Port Commission.

“Port Director” means the Executive Director of the Port, or such other Port employee as the Executive Director or Port may designate from time to time.

“Port Loan” is defined in *Section 7*.

“Port Loan Due Date” is defined in *Section 7.2*.

“Port Loan Excess Proceeds” is defined in *Section 7.5*.

“Port program or project” means (a) any development, removal or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating), or (c) the Seawall Earthquake Safety Program.

“Port representative” means Port, a City auditor, or any auditor or representative designated by Port.

“Port’s Sponsorship Standards” means those standards with respect to Port Director Sponsorships and Port Commission Sponsorships set forth in *Schedule 12.1(a)*.

“Pre-Existing Hazardous Materials” means any Hazardous Material existing in, on, or under the Premises as of the Commencement Date.

“Premises” means the real property described in the Basic Lease Information and described and depicted on *Exhibit A-1* and *Exhibit A-2* respectively, and all Improvements thereon.

“Prevailing party” is defined in *Section 27.1*.

“Prohibited Use(s)” is defined in *Section 8.2*.

“Project Site” is defined in the preamble to this Lease.

“Public Access Areas” are the areas designated in the BCDC Permits applicable to the Property that must be accessible to the public during the hours designated in such permits.

“Recognition Agreement” means an agreement entered into by the Port, in a form approved by the Port Commission, which obligates the Port to recognize and assume a Sponsorship Agreement upon termination of the Park Lease, which Port may enter into in its sole and absolute discretion.

“Records Default” is defined in *Section 5.8*.

“Records Request” is defined in *Section 5.8*.

“Regulatory Agency” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port’s Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

“Regulatory Approval” means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

“Release” when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, over, or under the Premises.

“Remediate” or **“Remediation”** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. **“Remediation”** also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

“Renewal Options” is defined in *Section 3.2(a)*.

“Renewal Term” is defined in *Section 3.2(a)*.

“Repair Period” means two hundred ten (210) days after the date of damage to the Premises by fire or other casualty.

“RMA” is defined in the preamble to this Lease.

“RPD” is defined in *Section 9.2*.

“Rules and Regulations” means the Rules and Regulations, if any, applicable to the Premises, as may be amended from time to time.

“Second Budget Notice” is defined in *Section 5.2(c)*.

“Soil Management Plan” means that certain Soil Management Plan dated as of [XXXX] and prepared by [XXXX] for the Project Site, approved by Port, the Department of Public Health, and the California Department of Toxic Substances Control.

“Specified Related Agreements” means the Port Paseo and Open Spaces Management Agreement and those certain other agreements (if any) identified by mutual agreement between Port and Tenant to be related to this Lease.

“Sponsorship Agreement” means an agreement between Tenant and a sponsor with respect to a Sponsorship affecting the Premises, as further defined in *Section 12.1*.

“Sponsorship Revenues” means any revenues received by Tenant pursuant to each Sponsorship Agreement with respect to the Premises.

“Sponsorship subject to Commission Approval” is defined in *Section 12.1*.

“Sponsorship subject to Director Approval” is defined in *Section 12.1*.

“Sponsorship” or **“Sponsorships”** means each and every agreement between Tenant and a Person (sponsor) in which Tenant receives consideration from the sponsor for sponsor’s use or

occupancy of the Premises (such as Temporary Signage identifying the sponsor) and includes each Sponsorship subject to Commission Approval and each Sponsorship subject to Director Approval.

“State” means the State of California.

“Submission Period” is defined in *Section 5.8*.

“Subsequent Horizontal Construction” means any Horizontal Improvements to be constructed after the Effective Date which are located within the area constituting the Premises.

“SWPPP” is defined in *Section 19.8(a)*.

“Taking” means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

“Temporary Signage” is defined in *Section 12.1*.

“Tenant” means the party identified as Tenant in the Basic Lease Information.

“Tenant Parties” is defined in *Section 33.7*.

“Tenant’s Property” means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant’s Property, in either case without cost to Port.

“Term” is defined in *Section 3.1*.

“trade fixtures” means those items of personal property, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

“Utilities” means electricity, water, gas, heat, sewers, oil, telecommunication services and all other utilities.

“WPA” means that certain water purchase agreement for the purchase of water for the Premises, as defined in the Basic Lease Information.

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **[INSERT NAME OF TENANT]**

By: _____

Name: _____

Title: _____

Date Signed: _____

By: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____

Name: _____
Deputy City Attorney

Lease Prepared By: _____, Commercial Property Manager _____
(initial)

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EXHIBIT A-1

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT A-2

DEPICTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

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EXHIBIT C

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

Landlord: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

Tenant:

Lease Number:

Lease Date:

Premises: [_____, Suite ____]
San Francisco, California

The Commencement Date of the Lease is hereby established as _____, 20____, the
Anniversary Date is hereby established as _____, 20____ and the Expiration Date as
_____, 20____.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____

Name: _____

Title: _____

Date Signed: _____

EXHIBIT D

INITIAL BUDGET

DRAFT

Mission Rock Commons

DRAFT Initial Operations & Programming Budget - 2025 Split

Draft: February 6, 2025

GENERAL				
	2025 CBP	2025 Streets + Paseos	2025 Total	Notes
BASELINE REVENUE				
Vertical Parcel Dues / Special Services Tax Equivalent	\$ 1,116,770	\$ 372,257	\$ 1,489,026	3% Escalation
ADDITIONAL ASSUMED REVENUE				
Parkside Restaurant Outdoor Use	\$ 10,000		\$ 10,000	License fee from adjacent restaurant retailers
Paseo Restaurant Outdoor Use		\$ 2,000	\$ 2,000	License fee from adjacent restaurant retailers
Street Restaurant Outdoor Use		\$ 1,000	\$ 1,000	License fee from adjacent restaurant retailers
Parcel K Rent to CBP			\$ -	To be negotiated in a future agreement
	\$ 1,126,770	\$ 375,257	\$ 1,502,026	
EXPENSES				
Site				
Facilities & Engineering				
Facilities Staffing	\$ 198,185	\$ 66,062	\$ 264,247	0.75 FTE
Facilities Office	\$ 4,629	\$ 1,543	\$ 6,172	
Maintenance & Repairs				
Sprinkler Testing	\$ 1,275	\$ 425	\$ 1,700	
Plumbing Repairs & Maintenance	\$ 13,600		\$ 13,600	
Door Maintenance & Repairs	\$ 3,000		\$ 3,000	
Sidewalk Repair	\$ 4,050	\$ 1,350	\$ 5,400	
Metal Maintenance	\$ 9,000	\$ 3,000	\$ 12,000	
Painting	\$ 4,500	\$ 1,500	\$ 6,000	
Security Equipment & Maintenance	\$ 17,507	\$ 5,836	\$ 23,343	
Fire Alarm & Equip. Testing	\$ 3,500		\$ 3,500	
Exterior Landscaping	\$ 63,113	\$ 21,038	\$ 84,150	Under partial warranty
Radio Maintenance	\$ 2,550	\$ 850	\$ 3,400	
Permits	\$ 113	\$ 38	\$ 150	
Custodial				
Day Cleaning	\$ 216,736	\$ 72,245	\$ 288,981	Pressure Washing/Steam Cleaning: (1x week); Litter/debris collection, sweeping (3x week/ 2x day- min) CBP restroom service: (7-day/ week, min 2x day service on non-peak demand times and min 3x day service on high-peak demands); Disposal: (7 day-week); Street Sweeper: (1x week); Graffiti Removal: As needed
Exterminating	\$ 2,673	\$ 891	\$ 3,564	
Janitorial/Cleaning Supplies	\$ 4,500	\$ 1,500	\$ 6,000	
Rubbish Removal	\$ 2,250	\$ 750	\$ 3,000	
Utilities / Other				
Electric	\$ 13,500	\$ 4,500	\$ 18,000	
Water & Sewer	\$ 488,727	\$ 162,909	\$ 651,636	
CBP Capital Assessment Report	NA	NA	-	Assessment to inform capital planning , to be completed in 2026
Administrative			\$ -	
Management Fee		\$ 10,000	\$ 10,000	
Administrator	\$ 43,002	\$ 1,001	\$ 44,002	Accounting, reporting, and contract management
Audit + Legal + Filing Fees	\$ 6,165	\$ 2,055	\$ 8,220	
Insurance				
Commercial General Liability	\$ 180,000	\$ 60,000	\$ 240,000	\$40M GL
TOTAL BASELINE OPERATING COSTS	\$ 1,282,573	\$ 417,491	\$ 1,700,065	
NET OPERATING DEFICIT WITH ADDITIONAL REVENUE	\$ (155,804)	\$ (42,235)	\$ (198,039)	
PROGRAMMING & SPONSORSHIPS				
	2025 CBP	2025 Streets + Paseos	2025 Total	
REVENUE				
Concessions + F&B	\$ 53,000		\$ 53,000	Food trucks, alcohol
CBP Sponsorships	\$ 150,000		\$ 150,000	Programming and naming sponsorships
CBP Event Usage Rental (3rd Party Events)	\$ 177,000		\$ 177,000	3rd Party event rentals
SUBTOTAL	\$ 380,000		\$ 380,000	
EXPENSES				
Programming + Permitting				

DRAFT Initial Operations Programming Budget - 2025 Split

Programming + Permitting + Day-Of Activation Staffing	\$ 400,000		\$ 400,000	2.35 FTE. Staff includes concessions coordination, sales outreach, marketing, administration, permitting, SF Port communications, event planning + programming, day-of event managers.
Programming Costs	\$ 67,500		\$ 67,500	Programming fees to support the execution of programming sponsorships (estimate, dependent on deal structure)
Programming Office + Supplies	\$ 5,000		\$ 5,000	Office, licenses
Sponsorship Commission	\$ 27,000		\$ 27,000	Commission to entity securing sponsorships (18%)
Marketing				
Marketing / Social Media Staff	\$ 38,667		\$ 38,667	0.35 FTE
Signage	\$ 5,000		\$ 5,000	General park signage
Website Maintenance	\$ 3,333		\$ 3,333	CBP site maintenance, ongoing calendar updates, event inquiry intake
SUBTOTAL	\$ 546,500	\$ -	\$ 546,500	
PROGRAMMING & SPONSORSHIPS NET	\$ (166,500)	\$ -	\$ (166,500)	
NET OPERATING DEFICIT WITH SPONSORSHIPS	\$ (322,304)	\$ (42,235)	\$ (364,539)	

MASTER ASSOCIATION ADDITIONAL EXPENSES

	2025 CBP	2025 Streets + Paseos	2025 Total	
EXPENSES				
Security / Ambassadors			\$ 150,509	6am-10pm daily roamer, spotter at night
TDM			\$ 50,000	
Administrative				
Administrator			\$ 54,002	Accounting, reporting, and contract management
Audit + Legal + Filing Fees			\$ 8,200	
Insurance				
Commercial General Liability			\$ 17,931	
Reporting				
LCC			\$ 2,500	
Marketing				

EXHIBIT E
BCDC PERMIT

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EXHIBIT F
MISSION ROCK PARKS PLAN

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EXHIBIT G
DETAILED MAINTENANCE TABLES

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General Maintenance + Operations							
	Daily	K/M	Weekly	Monthly	Q/Year	As Needed	Comments
Litter Control							
Control Litter	X						Minimum 1 times/day. Focus concentrated around food areas
Empty trash receptacles	2x						Minimum 1 times/day. Focus concentrated around food areas
Control litter after events						As needed	Additional janitorial staff will be hired to manage litter during and after events.
Pavement (curbed asphalt, concrete, lawns)							
Sweep			X				
Clean up spills			X			As needed	Immediately
Pressure Wash		X					
Buff Clean - Pavers						As needed	With stone scrubber machine
Inspect for lifts/cracks			X				Provide condition report
Walls and Interior/Exterior Surfaces						As needed	
Clean Surfaces						As needed	Immediately
Remove postings/affix							
Site Furniture							
Clean	X						Wipe down park tables, especially after food/drink spills
Wash light fixtures				X			
Wash drinking fountains			X				
Wash movable tables/chairs			X				
Signage							
Project	X						
Remove postings/affix						As needed	Immediately
Wash			X				
Plaster spaces				X			Tidy and inventory
Storage room				X			Tidy and inventory
Maintenance Room				X			Tidy and inventory
Other incidental spaces				X			Tidy and inventory
Empty trash receptacles		X					Minimum 1 times/day. Focus concentrated around food areas
Restrooms							
Plumbing		2x					
Stocked		2x					
Pig Zone							
Clean		X					Spray down weekly
Stocked		X					
Sand Area /							
Control Litter	X						

Landscape							
	Daily	Weekly	Bi-Weekly	Monthly	Q/Year	As Needed	Comments
1. Leaf Litter Removal	X						
2. Clipping Removal		X					
3. Weat Appearance		X					
4. Weed Control - Hand Pull		X					
5. Irrigation Check					4X		
6. Irrigation Programming		X					
7. Fertilize					X		
8. Pest Control				X			
9. Monitor		X					
10. Treat turf with fertilizer including					X		
11. Mow		X					Remove grass clippings
12. Edge		X					
13. Irrigation					X		
14. Reestablishment						As needed	
15. Overseed turf after events					X		Lower report costs will be included as part of event costs
16. Ground Cover Care							
1. Leaf Litter Removal		X					
2. Trash Removal		X					
3. Weat Appearance		X					
4. Weed Control - Hand pulling		X					
5. Irrigation Programming		X				As needed	
6. Irrigation Check					4X		
7. Fertilize					X		
8. Pest Control				X			
9. Monitor		X					
10. Snails				X			
11. Other Treatments						As needed	Based on observations
12. Stone					X		
13. Color				X			
14. Cullage				X			
15. Replace ground covers				X			
C. Tree & Shrub Care			Bi-Weekly	Monthly	Q/Year	As Needed	
1. Leaf Litter Removal		X					
2. Trash Removal		X					
3. Weat Appearance		X					
4. Weed Control - Hand pulling		X					
5. Irrigation Programming		X					
6. Irrigation Check					4X		
7. Check tree rootball moisture		X					Irrigation Controller
8. Supplemental hand water						As needed	
9. Fertilize				X		As needed	Guided by soil testing
10. Irrigation Risk Management				X	2X		
11. Monitor				X			
12. Snails				X			
13. Treat trees						As needed	Based on observations and testing
14. Pruning Site						As needed	
15. Pruning Tree Roots						As needed	
16. Pruned Stems				X			
17. Replace trees and shrubs						As needed	
18. Maintain mulch depth				X			
19. Water or water/water/parts near area						As needed	

Specialty Repairs & Hardscape							
	Daily	K/M	Weekly	Monthly	Q/Year	As Needed	Comments
Pavement							
Inspect for lifts/cracks					4X		
Repair						As Needed	Per Specifications
Wood Deck + Stormwater Pathway							
Inspect					4X		
Repair						As Needed	Immediately
Colored Asphalt							
Inspect					4X		
Repair						As Needed	As soon as possible
Bike racks							
Inspect					4X		
Repair						As needed	
Walls and Exterior Surfaces							
Inspect					4X		
Touch-up or repaint						As needed	
Site Furniture							
Inspect					4X		
Replace						As needed	As budget allows
Project			X				
Lighting and Electrical							
Inventory all light bulbs and ballast					2x		bi-annual and on ongoing basis
Replace bulbs						As needed	As necessary
Wash light fixtures						As needed	As necessary
Inspect for maintenance					4X		Per manufacturers recommendations
Routine Maintenance			X				As necessary
Perform a preventative maintenance program for mechanical & lighting					1X		
Plumbing							
Inspect leaks					2X		
Backflow device testing					X		
Inspect water meters							
Inspect all restrooms faucets			X	X			
Re-toilet							
Repair all rest-room faucets & toilets						As Needed	Immediately
Storm System, Sanitary System, City Water & Fire Loop							
Inspect to ensure working order					4X		Stormwater & Fire Hydrants belongs to PORT
Remove snags/damage						As Needed	Sanitary system and City Water belongs to MROA.
Other pipes and clean outs						As Needed	Immediately
Clear lines						As Needed	Immediately
Irrigation Oversight							
Maintenance		X					
Inspect contractors maintenance				X			As needed
Signage							
Inspect	X						
Replace						As needed	
Repair						As needed	Change information as necessary

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EXHIBIT H
PARK MAINTENANCE STANDARDS

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FY22 Park Evaluation Standards

Feature	Element	Standard
Athletic Field	Cleanliness	hypodermic needle, condom, dead animal, feces, feces-filled bag, or broken glass
Athletic Field	Cleanliness	large abandoned item (fallen trees or limbs, furniture, luggage, tent-like structure, etc.)
Athletic Field	Cleanliness	grime, filth, soil or debris build-up prevents full access to a table, seat, or field area
Athletic Field	Cleanliness	litter: 3 different spots has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Athletic Field	Cleanliness	organic debris: leaf litter, seed pods, etc., lie 2" deep continuously for a distance of 5' within play area
Athletic Field	Drainage	1 large pool (5' long or larger) or 2 smaller pools (each 3' long)
Athletic Field	Equipment	any other type of equipment is missing or damaged
Athletic Field	Equipment	home plate or pitching rubber missing
Athletic Field	Equipment	soccer goal: frame is cracked or broken, or missing a wheel, net has 1 hole or gap 11" wide and long, or net is missing
Athletic Field	Equipment	windcreens: 2 windcreens are unanchored or damaged
Athletic Field	Fencing	chain link bulges 8.5" from vertical or has completely separated from fence poles
Athletic Field	Fencing	fence pole is bent or leans 8.5" or more from vertical
Athletic Field	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Athletic Field	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Athletic Field	Fencing	unstable or unanchored fence pole or horizontal bar
Athletic Field	Fencing	sharp edge, protrusion, rot, or splintering
Athletic Field	Graffiti	non-wood surface has graffiti on it
Athletic Field	Graffiti	sticker is on a field structure
Athletic Field	Graffiti	wood surface has graffiti on it
Athletic Field	Paint	multiple colors: touch-up paint does not match original color
Athletic Field	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Athletic Field	Seating	all-metal table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Athletic Field	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Athletic Field	Seating	wood or synthetic table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Athletic Field	Signage	no signage present at the athletic field
Athletic Field	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Athletic Field	Signage	unanchored or upside down sign
Athletic Field	Signage	sign text is illegible
Athletic Field	Structures	light poles or other permanent structures are damaged
Athletic Field	Surface Quality	ball diamond: 2" deep depression lies within 3' of either home plate or the pitching rubber
Athletic Field	Surface Quality	natural turf: 1 hole 4.5" wide and deep or larger
Athletic Field	Surface Quality	natural turf: all brown turf area 10' wide and long or larger
Athletic Field	Surface Quality	natural turf: bare areas: 1 large area (5' wide and long or larger) or 3 small areas (each 3' wide and long or larger)
Athletic Field	Surface Quality	natural turf: hardscape is 2" higher or lower (or more) than adjacent field turf for a distance of five feet
Athletic Field	Surface Quality	natural turf: mounds created by a gopher or other animal rise 2" above the surrounding turf
Athletic Field	Surface Quality	natural turf: tire rut 4.5" deep and 5" long or longer
Athletic Field	Surface Quality	synthetic turf: 2 edges frayed or unanchored, or 1 hole or tear inside the field
Athletic Field	Turf Maintenance	bench, pole, or sign has turf around it which is 4.5" higher than the rest of the field
Athletic Field	Turf Maintenance	curb, pavement, or path is covered by 4.5" or more or turf overgrowth or turf soil for a distance of 5'
Athletic Field	Turf Maintenance	fence, retaining wall, or structure has turf along it which is 4.5" taller than the rest of the field for a distance of 5'
Athletic Field	Turf Maintenance	infield turf is more than 4.5" high at any location
Athletic Field	Turf Maintenance	outfield or other turf is more than 4.5" high at any locaiton, whether in the outfield or outside of the play area
Athletic Field	Weeds	11" long strip of weeds in any part of the athletic field
Buildings & General Amenities	Cleanliness	grime, soil, or debris build-up on a drinking fountain, seating, or other amenity impedes use
Buildings & General Amenities	Drinking Fountains	no drinkable stream of water; drips or leaks; overshoots its bowl; or standing water that does not drain
Buildings & General Amenities	Fencing	chain link bulges 8.5" from vertical or has completely separated from fence poles
Buildings & General Amenities	Fencing	fence pole is bent or leans 8.5" or more from vertical
Buildings & General Amenities	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Buildings & General Amenities	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Buildings & General Amenities	Fencing	unstable or unanchored fence pole or horizontal bar
Buildings & General Amenities	Fencing	sharp edge, protrusion, rot, or splintering
Buildings & General Amenities	Free-Standing Walls	concrete/brick/stone wall has large crack or break 2" wide and long (or larger); leans 8.5" or more from vertical; or is unstable

FY22 Park Evaluation Standards

Feature	Element	Standard
Buildings & General Amenities	Free-Standing Walls	metal wall leans 8.5" or more from vertical; or has breakage, deterioration, or rot that impairs the wall's functionality
Buildings & General Amenities	Free-Standing Walls	skateboarding guard is loose, broken or bent
Buildings & General Amenities	Free-Standing Walls	wooden or synthetic wall leans 8.5" or more from vertical; or has breakage, deterioration, or rot that impairs the wall's ability to contain a slope
Buildings & General Amenities	Graffiti	sticker is on a building or general amenity
Buildings & General Amenities	Graffiti	graffiti is on a building or general amenity
Buildings & General Amenities	Miscellaneous Infrastructure	crack or dent 1" wide and deep, or larger
Buildings & General Amenities	Miscellaneous Infrastructure	electrical wiring exposed and accessible to park users
Buildings & General Amenities	Miscellaneous Infrastructure	missing piece or other damage impedes use of the structure or access to a park area
Buildings & General Amenities	Miscellaneous Infrastructure	sharp edge, protrusion, rot or splintering
Buildings & General Amenities	Miscellaneous Infrastructure	unstable or insufficiently sturdy structure
Buildings & General Amenities	Paint	multiple colors: touch-up paint does not match original color
Buildings & General Amenities	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Buildings & General Amenities	Seating	concrete bench or chair: unstable; or has a leg which is missing, broken or unanchored
Buildings & General Amenities	Seating	metal bench or chair: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Buildings & General Amenities	Seating	wood bench or chair: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Buildings & General Amenities	Signage	no general signage at this site
Buildings & General Amenities	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Buildings & General Amenities	Signage	unanchored or upside down sign
Buildings & General Amenities	Signage	sign text is illegible
Buildings & General Amenities	Waste Receptacles	no recycling or dual-stream receptacle is available at this site
Buildings & General Amenities	Waste Receptacles	receptacle is full to the point of overflowing
Buildings & General Amenities	Waste Receptacles	waste receptacle is damaged or missing a part where it impedes use
Children's Play Areas	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Children's Play Areas	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Children's Play Areas	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Children's Play Areas	Cleanliness	soil or debris build-up prevents full access to a table, seat, or field area
Children's Play Areas	Fencing	fence pole is bent or leans 8.5" or more from vertical
Children's Play Areas	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Children's Play Areas	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Children's Play Areas	Fencing	unstable or unanchored fence pole or horizontal bar
Children's Play Areas	Fencing	sharp edge, protrusion, rot, or splintering
Children's Play Areas	Graffiti	non-wood surface has graffiti on it
Children's Play Areas	Graffiti	sticker is on a CPA surface
Children's Play Areas	Graffiti	wood surface has graffiti on it
Children's Play Areas	Paint	multiple colors: touch-up paint does not match original color
Children's Play Areas	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Children's Play Areas	Sand	hard/compacted sand
Children's Play Areas	Sand	object protrudes from sand and may cause tripping
Children's Play Areas	Sand	sand spills: sand is on a surface 5 feet or more away from a sandbox edge; or completely covers any play structure landing
Children's Play Areas	Sand	sandbox litter: 5 pieces of litter/debris of any size
Children's Play Areas	Seating	concrete bench or chair: unstable; or has a leg which is missing, broken or unanchored
Children's Play Areas	Seating	metal bench or chair: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Children's Play Areas	Seating	wood bench or chair: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Children's Play Areas	Signage	no CPA-related signage at this site
Children's Play Areas	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Children's Play Areas	Signage	unanchored or upside down sign
Children's Play Areas	Signage	sign text is illegible
Children's Play Areas	Structures	rust and/or denting: 3 strips, each 4.5" long and 1" wide, or larger
Children's Play Areas	Structures	unstable, tilted, sunken, or deformed piece of play equipment
Children's Play Areas	Structures	bolt, screw or other fastener is missing or loose
Children's Play Areas	Structures	footing, handrail, ladder rung or play structure platform slat is loose, broken, bent or missing
Children's Play Areas	Structures	sharp edge, protrusion, rot or splintering

FY22 Park Evaluation Standards

Feature	Element	Standard
Children's Play Areas	Surface Quality	rubber surface: edge is curled 1" above grade, or a seam has a vertical drop of 1/2"
Children's Play Areas	Surface Quality	rubber surface: object protrudes from rubber and may cause tripping
Children's Play Areas	Surface Quality	rubber surface: unstable surfacing, rubber moves under foot
Children's Play Areas	Surface Quality	rubber surface: worn area 4.5" long and wide and 1/2" deep
Children's Play Areas	Surface Quality	sand: depth is 6" or less deep, in any location
Children's Play Areas	Surface Quality	sand: top of sand is or more below an adjacent curb or surface, in any location
Children's Play Areas	Surface Quality	synthetic turf: 2 edges are frayed or unanchored, or there is 1 hole or tear inside the synthetic turf
Children's Play Areas	Water Feature	CPA water feature does not work or has drips/leaks that cannot be stopped
Children's Play Areas	Weeds	11" long strip of weeds in any part of the CPA
Dog Play Area	Cleanliness	feces or feces-filled bag
Dog Play Area	Cleanliness	hazardous litter: hypodermic needle, condom, or broken glass
Dog Play Area	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Dog Play Area	Cleanliness	litter: 1 spot has 5 pieces of larger litter
Dog Play Area	Cleanliness	soil or debris build-up prevents full access to a bench or chair
Dog Play Area	Drainage	pools of water: 2 large pools (each 5 feet long or larger)
Dog Play Area	Equipment	dog bag dispenser has a missing piece or other damage that impedes use
Dog Play Area	Equipment	windcreens: 2 windcreens are unanchored or damaged
Dog Play Area	Fencing	fence pole is bent or leans 8.5" or more from vertical
Dog Play Area	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Dog Play Area	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Dog Play Area	Fencing	unstable or unanchored fence pole or horizontal bar
Dog Play Area	Fencing	sharp edge, protrusion, rot, or splintering
Dog Play Area	Graffiti	non-wood surface has graffiti on it
Dog Play Area	Graffiti	sticker is on a DPA surface
Dog Play Area	Graffiti	windscreen or wood surface has graffiti on it
Dog Play Area	Seating	all-metal table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Dog Play Area	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Dog Play Area	Seating	wood or synthetic table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Dog Play Area	Signage	no dog-use signage at this site
Dog Play Area	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Dog Play Area	Signage	unanchored or upside down sign
Dog Play Area	Signage	sign text is illegible
Dog Play Area	Surface Quality	dirt, sand, wood chips, decomposed granite, or turf: 5 large holes, each 4.5" wide and 4.5" deep, or larger
Dog Play Area	Surface Quality	synthetic turf: 2 edges are frayed or unanchored, or there is 1 hole or tear inside the synthetic turf
Greenspace	Cleanliness	hazardous litter: hypodermic needle, condom, dead animal, feces, feces-filled bag, or broken glass
Greenspace	Cleanliness	large abandoned item (fallen trees or limbs, furniture, luggage, tent-like structure, etc.)
Greenspace	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Greenspace	Graffiti	non-wood surface has graffiti on it
Greenspace	Graffiti	sticker is on a Greenspace surface
Greenspace	Graffiti	wood surface has graffiti on it
Greenspace	Pruning	impeded use: a Greenspace plant impedes an athletic court, athletic field, or CPA, prevents clear access to any handrail, seat or amenity
Greenspace	Pruning	obstructed viewing: a Greenspace plant blocks any lamp, sign or art installation
Greenspace	Pruning	path intrusion: a Greenspace plant causes a sactioned path or trail to be less than 3 feet wide and head height
Hardscape	Cleanliness	curb is covered by 4.5" of eroded soil, gravel or mulch, continuously for a distance of 5'
Hardscape	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Hardscape	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Hardscape	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Hardscape	Cleanliness	soil or debris build-up prevents full access to a table, seat, or field area
Hardscape	Curbs	crack or hole 2" wide, or larger, going completely through a curb
Hardscape	Curbs	curb no longer functions due to breakage and deterioration
Hardscape	Curbs	parking block no longer functions due to breakage and deterioration
Hardscape	Drainage	impeded access: standing water prevents travel on a path or across a Hardscape area, use of a parking lot or road, or access to another Feature

FY22 Park Evaluation Standards

Feature	Element	Standard
Hardscape	Drainage	pools of water: 2 large pools (each 5 feet long or larger)
Hardscape	Graffiti	asphalt or wood surface has graffiti on it
Hardscape	Graffiti	concrete, brick, metal, or rubbery/synthetic surface has graffiti on it
Hardscape	Graffiti	sticker is on a hardscape surface
Hardscape	Paint	crosswalk or stop sign limit line has a 5' section which fails to clearly delineate where travel or stopping should occur
Hardscape	Paint	illegible text/symbol painted onto a hardscape; or any non-court game area that has a missing play line or a 5' section which fails to clearly delineate whether a ball or player would be in play
Hardscape	Paint	public parking lot has no striping or has 1 stall dividing line which fails to clearly delineate where cars should park
Hardscape	Parking & Road Signs	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Hardscape	Parking & Road Signs	unacnchored or upside down sign
Hardscape	Parking & Road Signs	sign text is illegible
Hardscape	Paths & Plazas	asphalt has a crack 2" wide or with a 1/2" vertical drop; a hole 2" wide and deep; or has a 2" uplifted ridge or crumbling surface that is 3' wide or longer
Hardscape	Paths & Plazas	concrete, rubber, or other non-asphalt pavement has a crack 2" wide or with a 1/2" vertical drop; a hole 2" wide and deep; or has a 2" uplifted ridge or crumbling surface that is 3' wide or longer
Hardscape	Roads & Lots	potholes & ridges:1 road/lot has 3 locations where:crumbling and loose asphalt 5' wide & long (or larger); pothole 4.5" wide and deep (or larger); or uplifted ridge rising 4.5" above grade
Hardscape	Stairways	concrete/stone stair: step is broken, unstable or 11" or more higher than the surface below it
Hardscape	Stairways	handrail is unanchored, unstable, has missing rails or posts, or is missing from any stairway that has 3+ steps
Hardscape	Stairways	wooden stair: step is broken, unstable or 11" or more higher than the surface below it
Hardscape	Walkway Clearance	leaves 2" deep or plant trimmings on a path reduces the clean area for travel to less than 3' wide
Hardscape	Walkway Clearance	spill of decomposed granite, gravel, mulch, sand or soil on a path reduces the clean area for travel to less than 3' wide
Hardscape	Weeds	strip of continuous weeds rises above grade for a distance of 5'
Lawns	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Lawns	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Lawns	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Lawns	Drainage	1 large pool (5' long or larger)
Lawns	Drainage	access impeded: turf saturation prevents access to a lawn area or to another Feature
Lawns	Surface Quality	all brown turf area 10' wide and long or larger
Lawns	Surface Quality	bare areas: 1 large area (5' wide and long or larger) or 3 small areas (each 3' wide and long or larger) where the field has exposed soil and no grass
Lawns	Surface Quality	hardscape is 2" higher or lower (or more) than adjacent lawn turf for a distance of five feet
Lawns	Surface Quality	holes: 2 holes 4.5" wide and deep or larger
Lawns	Surface Quality	mounds created by a gopher or other animal rise 2" above the surrounding turf
Lawns	Surface Quality	tire rut 4.5" deep and five" long or longer
Lawns	Turf Maintenance	unmowed: all Lawn turf within 10' of you is more than 4.5" high
Lawns	Turf Maintenance	bench, pole, or sign has turf around it which is 4.5" higher than the rest of the lawn
Lawns	Turf Maintenance	curb, pavement, or path is covered by 4.5" or more or turf overgrowth or turf soil for a distance of 5'
Lawns	Turf Maintenance	fence, retaining wall, or structure has turf along it which is 4.5" taller than the rest of the lawn for a distance of 5'
Ornamental Beds	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Ornamental Beds	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Ornamental Beds	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Ornamental Beds	No Mow Grass	all-brown turf area 10' wide and long, or larger
Ornamental Beds	No Mow Grass	bare areas: 3 bare areas (each 3' wide and long, or larger) with exposed soil and virtually no grass
Ornamental Beds	Plants	dead plants are throughout 1/4 of 1 bed
Ornamental Beds	Plants	damaged plants: 2 broken or uprooted plants are in 1 ornamental bed
Ornamental Beds	Pruning	impeded use: a plant impedes an athletic court, athletic field or CPA, or prevents clear access to a handrail, seat or amenity
Ornamental Beds	Pruning	obstructed viewing: a plant blocks a lamp, sign or art installation
Ornamental Beds	Pruning	path intrusion: a plant causes a path or trail to be less than 3' wide and head height
Ornamental Beds	Weeds	vines: 2 plants within a single bed are overtaken by blackberry, ivy, or poison oak
Ornamental Beds	Weeds	weeds exist in more than 1/4 of a bed
Outdoor Courts	Cleanliness	grime or spillage on seating, equipment, or court surface impedes its use
Outdoor Courts	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Outdoor Courts	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Outdoor Courts	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Outdoor Courts	Cleanliness	organic debris: leaf litter, seed pods, etc., lie 2" deep continuously for a distance of 5'
Outdoor Courts	Cleanliness	soil or debris: build-up prevents full access to a table, seat, or court area

FY22 Park Evaluation Standards

Feature	Element	Standard
Outdoor Courts	Drainage	pool of water: 1 small pool 22" long or larger
Outdoor Courts	Equipment	any other type of equipment at the outdoor court is missing or damaged
Outdoor Courts	Equipment	fitness court equipment is damaged or missing
Outdoor Courts	Equipment	golf cage synthetic turf tee pad is missing or damaged
Outdoor Courts	Equipment	horseshoe stake is missing or unanchored
Outdoor Courts	Equipment	tennis net center hangs 4-1/2 inches below horizontal or lower
Outdoor Courts	Equipment	windscreens: 2 windscreens are unanchored or damaged
Outdoor Courts	Equipment	basketball, golf, volleyball, or tennis net is missing, unanchored, or worn to an extent that play would be affected
Outdoor Courts	Fencing	chain link bulges 8.5" from vertical or has completely separated from fence poles
Outdoor Courts	Fencing	fence pole is bent or leans 8.5" or more from vertical
Outdoor Courts	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Outdoor Courts	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Outdoor Courts	Fencing	unstable or unanchored fence pole or horizontal bar
Outdoor Courts	Fencing	sharp edge, protrusion, rot, or splintering
Outdoor Courts	Graffiti	asphalt, windscreen, or wood surface has graffiti on it
Outdoor Courts	Graffiti	metal or concrete surface has graffiti on it
Outdoor Courts	Graffiti	sticker is on a court surface
Outdoor Courts	Paint	multiple colors: touch-up paint does not match original color
Outdoor Courts	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger on any court surface or equipment
Outdoor Courts	Paint	play lines: there is no play line striping or a 5' section of line fails to clearly delineate whether a ball or player would be in or out of bounds
Outdoor Courts	Seating	all-metal table or seat: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Outdoor Courts	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Outdoor Courts	Seating	wood or synthetic table or seat: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Outdoor Courts	Signage	no sports signage at this court
Outdoor Courts	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Outdoor Courts	Signage	unanchored or upside down sign
Outdoor Courts	Signage	sign text is illegible
Outdoor Courts	Structures	light poles or other permanent structures are damaged
Outdoor Courts	Structures	crack or hole 1/2" wide or larger, or any vertical drop-off or uplift that is 1/2" or more
Outdoor Courts	Weeds	3 strips of continuous weeds that each rise above grade for a length of 11"
Restrooms	Cleanliness	fixture: a toilet, sink, diaper changing station, or waste receptacle has filth or spillage on it
Restrooms	Cleanliness	floor has filth or spillage on it
Restrooms	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass is present
Restrooms	Cleanliness	litter: 5 pieces of litter of any size and in any location (on floor, wall, ceiling, etc.)
Restrooms	Equipment	diaper-changing station is broken or unanchored
Restrooms	Equipment	electric hand dryer does not work or is unanchored
Restrooms	Equipment	plumbed fixture (a toilet, urinal, faucet or sink) leaks, does not work, does not drain, or is unanchored
Restrooms	Equipment	sink faucet does not deliver a usable stream of water
Restrooms	Equipment	soap dispenser is missing, broken or unanchored
Restrooms	Equipment	toilet paper dispenser is missing, broken or unanchored
Restrooms	Equipment	toilet seat is missing, broken or unanchored
Restrooms	Graffiti	non-wood surface has graffiti on it
Restrooms	Graffiti	sticker is on a restroom surface
Restrooms	Graffiti	wood surface has graffiti on it
Restrooms	Lighting	no lighting in this restroom; too dark to see surroundings
Restrooms	Lighting	light is not working
Restrooms	Paint	multiple colors: touch-up paint on a door, partition, walls, or ceiling does not match original color
Restrooms	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Restrooms	Signage	gender or hours of operation not posted
Restrooms	Signage	unanchored or upside down sign
Restrooms	Signage	sign text is illegible
Restrooms	Structures	crack or dent 1" wide and deep, or larger

FY22 Park Evaluation Standards

Feature	Element	Standard
Restrooms	Structures	door or latch is missing or does not work
Restrooms	Structures	impeded access due to damage to a door, floor area, partition, or wall
Restrooms	Supplies	no paper towels or soap in entire restroom
Restrooms	Supplies	no toilet paper in a stall
Restrooms	Waste Receptacles	no trash can is inside the restroom
Restrooms	Waste Receptacles	receptacle is full to the point of overflowing (and is thus too full to use)
Trees	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass inside a tree well
Trees	Cleanliness	tree litter: a kite, plastic bag, or other abandoned object is in a tree branch
Trees	Cleanliness	tree well litter: a tree well has either 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Trees	Graffiti	graffiti is on a tree
Trees	Graffiti	sticker is on a tree
Trees	Pruning	impeded use: a living tree or tree well plant impedes an athletic court, athletic field or CPA, or prevents clear access to a handrail, seat or amenity
Trees	Pruning	obstructed viewing: a living tree or tree well plant blocks a lamp, sign or art installation
Trees	Pruning	path intrusion: a living tree or tree well plant causes a path or roadway to be less than 3' wide and head height
Trees	Tree Condition	dead standing tree
Trees	Tree Condition	dead limbs: 3 dead limbs (each 4.5" in diameter or larger) on one living tree
Trees	Tree Condition	hanger: tree limb 4.5" in diameter or larger is hanging from a tree
Trees	Weeds	ivy is growing 5+ feet up the trunk of a tree, or is in the branches of a small tree
Trees	Weeds	tree well: patch of weeds 11" wide and long in a tree well
Table Seating Areas	Cleanliness	coals/ash fill a grill to the point of overflowing
Table Seating Areas	Cleanliness	grime or spillage on a table, seat, or grill impedes use
Table Seating Areas	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Table Seating Areas	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Table Seating Areas	Cleanliness	litter: 1 table seating area has either 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Table Seating Areas	Cleanliness	soil or debris build-up prevents full access to a table, seat, or grill
Table Seating Areas	Graffiti	non-wood surface has graffiti on it
Table Seating Areas	Graffiti	sticker is on a table or seat
Table Seating Areas	Graffiti	wood surface has graffiti on it
Table Seating Areas	Grills	grill broken or missing, but the grill's support structure is still present
Table Seating Areas	Grills	sharp edge or protrusion on a grill structure
Table Seating Areas	Paint	multiple colors: touch-up paint does not match original color
Table Seating Areas	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Table Seating Areas	Seating	all-metal table or seat: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Table Seating Areas	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Table Seating Areas	Seating	wood or synthetic table or seat: unstable or unsturdy; has a leg or slat which is missing, broken or unanchored; or has rot or splintering

EXHIBIT I

DEI PLAN

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Exhibit I: China Basin Park DEI Plan

CHINA BASIN PARK DIVERSITY, EQUITY AND INCLUSION GOALS & PRIORITIES

China Basin Park will be an inclusive, equitable and high-quality public space for all San Franciscans, but especially for residents of the Southeastern waterfront. Designed with deep community input, Tenant will continue to be committed to engaging local communities to deliver culturally relevant programs, provide opportunities for historically underrepresented communities to co-create activations and provide inclusive everyday management to ensure everyone feels welcome in China Basin Park.

China Basin Park's Diversity, Equity and Inclusion plan reflects Port goals to increase racial diversity and engagement at Port parks and open spaces. Outlined in the Racial Equity Action Plan, key Port priorities for inclusive open spaces include:

- Engage southern waterfront residents of all abilities, especially youth to experience the waterfront.
- Provide publicly accessible and well-maintained parks and open space in the Southern Waterfront.
- Provide variety of free user experiences for residents in adjacent communities to enjoy outdoor activities.

At China Basin Park, Tenant will build upon these priorities, along with aligning with the Mission Rock Community Pillars:

- **Building Sustainability:** Creating an environmentally sustainable neighborhood and supporting natural systems.
- **Creating Connections:** Creating bridges between community assets, community organizations, and service providers.
- **Fostering Health & Wellbeing:** Creating and activating spaces to support mental and physical health in our community.
- **Advancing Economic Vitality:** Supporting small, local business owners and nonprofits.

Guided by the Port Racial Equity Action Plan ("REAP") and the Mission Rock Community Pillars, the following outlines core priorities and strategies to create a diverse and inclusive China Basin Park:

High Quality and Inclusive Everyday Park Management

- **Well Maintained Park:** China Basin Park will be well maintained through consistent hardscape, landscape and sanitation maintenance, ensuring high quality park spaces and amenities are accessible to the community.

- Safe and Inclusive Stewardship: Training park stewards and security staff to be welcoming to all communities and encouraging park resources and amenities to be shared equitably is a key priority. Park stewards and security staff are the daily representatives of China Basin Park and their inclusive approach to park patrons will foster an environment where everyone feels they can enjoy this public space.

Program Dynamic Free Events and Activations

- Free Events: A variety of free events will be offered to the general public throughout the year, varying in size and targeted audiences from fitness classes, busking, concerts, art programming, sustainability seminars, kids education and much more. Scale of free event programming will be dependent on revenue generation and sponsorships. Mission Rock Commons aims to produce or co-produce twenty percent (20%) of annual programs geared towards underrepresented communities and youths, at minimum.
- Community Engagement: To ensure Mission Rock Commons will produce culturally relevant events, community input will be solicited to help inform the annual calendar of free events. Events will be evaluated on patron participation to track communities being served.

Create Opportunities for Community Co-Creation

- Community Rate Card: Mission Rock Commons will develop a non-profit / community rate for venue rentals to lower the cost of entry for executing an event at China Basin Park. This reduced rate card will be geared towards event producers programming events free to the community and/or activations directed towards historically underrepresented populations in San Francisco. Mission Rock Commons aims to rent China Basin Park at the reduced community rate for twenty percent (20%) of all 3rd Party Event rentals, at minimum.
- Community Partnerships: Solicit partnerships with community-based organizations, neighborhood groups and culturally districts to co-produce events with Mission Rock Commons for relevant programming geared towards groups historically underserved in San Francisco's public spaces. Leverage heritage nights at adjacent Oracle Park, Chase Center or other event venues to produce concurrent programming directed at communities being targeted at these larger venues.

Foster Small Businesses and Creators

- Maker Markets: Seasonal farmers, craft and holiday markets provide opportunities for local farmers and makers to showcase their talents, expand their audience and increase economic opportunity for small business owners. Mission Rock Commons will seek to build markets at China Basin Park with sponsorship funding and community partnerships.

EXHIBIT J
GOOD NEIGHBOR POLICY

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EXHIBIT J

GOOD NEIGHBOR POLICY FOR SPECIAL EVENTS

1. Tenant shall provide notice of the following pending Special Events at least one week prior to such Special Event to the Central Waterfront Advisory Group (or its successor advisory group), neighbors or neighborhood organizations requesting notice and others as requested by Port: Special Events with a duration of five (5) days or more (excluding set up and take down) or Special Events with an estimated attendance of 5,000 people on the Premises at a given time.
2. Except as otherwise permitted by a permit issued by the Entertainment Commission or other governmental agency of competent jurisdiction, all Special Events in non-enclosed areas on the Premises involving music or other events where the Special Event may involve similar noise impacts shall conclude by 10:00 p.m.
3. Tenant shall remove from the Premises and adjacent Port facilities all debris and refuse resulting from the Special Event within 18 hours of the conclusion of any Special Events.
4. Tenant shall comply with the good neighbor policy below:
 - a. For Special Events with a duration of five (5) days or more (excluding set up and take down) or Special Events with an estimated attendance of 5,000 people on the Premises at a given time:
 - i. Notices shall be prominently displayed at entrances to and exits from the Premises urging patrons to leave the establishment and neighborhood in a quiet, peaceful and orderly fashion and to please not litter or block driveways in the neighborhood.
 - ii. Event Licensee shall provide a phone number to all interested neighbors that will be answered at all times by a representative of Event Licensee.
 - iii. In addition, a representative of the Event Licensee shall answer a phone for at least two hours after the conclusion of a Special Event to allow for police and emergency personnel or other City personnel to contact that person concerning incidents.
 - b. For all Special Events:
 - i. If permits are required for the Special Event, such Special Event shall be conducted in accordance with permits issued by the Entertainment

Commission or other governmental agency of competent jurisdiction and as reasonably necessary to accommodate the nature of the event.

- ii. Event Licensee agrees to be responsible for all operation under which an entertainment commission permit is required and granted, including associated conditions of such permit.
- iii. Sufficient toilet facilities and hand washing stations shall be made accessible to patrons within the Premises. If additional toilet facilities and hand washing stations are needed beyond the permanent facilities located on the Premises, Event Licensee must bring temporary facilities to the Premises for the duration of the Special Event.
- iv. Event Licensee shall take all reasonable measures to ensure the sidewalks adjacent to the Premises are not blocked or unnecessarily affected by patrons or employees due to the operations of the Premises.

The parties may mutually agree to update these policies from time to time as may be appropriate.

EXHIBIT K

MISSION ROCK DISTRICT STORM WATER POLLUTION PREVENTION PLAN

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EXHIBIT L

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the “**Property**”), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION (“Port”)** [and to _____ (“**Developer/Lender**”)] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the “**Lease**”) dated as of _____, 20____, between the undersigned and Port, covering approximately _____ square feet of the Property (the “**Premises**”).
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was _____, 20____, the expiration date of said Lease is _____, 20____.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned’s knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the undersigned’s actual knowledge after diligent inquiry, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the undersigned’s actual knowledge after diligent inquiry, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.
10. That, to the undersigned’s actual knowledge after diligent inquiry, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor’s relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate will be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20____.

[Name of Tenant]

By:

Name:

Title:

SCHEDULE 1

**ASBESTOS NOTIFICATION AND INFORMATION
NOTICE TO EMPLOYEES,
OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS**

[Attachment on following page(s)]

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SCHEDULE 2.9

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:
<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:
www.FloodSmart.gov.

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SCHEDULE 7

FORM PORT LOAN PROMISSORY NOTE

PROMISSORY NOTE (China Basin Park - Mission Rock)

By executing and delivering this **PROMISSORY NOTE** (“**Note**”), ____[Entity]____ (“**Borrower**”), promises to pay to the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **PORT COMMISSION OF SAN FRANCISCO** (“**Port**”), the principal amount of each Port Advance that the Port makes from time to time to Borrower in accordance with, and subject to the terms and conditions defined in that certain Lease No. L-____ and Loan Agreement between Borrower and Port dated for reference purposes as of ____, 2025 (the “**Lease and Loan Agreement**”).

Unless otherwise defined in this Note, initially capitalized and other terms are defined in the Lease and Loan Agreement.

This Note evidences the promise to pay to Port the principal amount of each Port Advance (each, an “**Advance**”) that Port will from time to time deliver to the Borrower. On payment in full of the amount of all principal and interest payable hereunder, this Note shall be surrendered to the Borrower for cancellation.

1. Within five business days after delivering each Advance, the Port will enter the information identified in the allonge attached to this Note.
2. In addition to all remedies provided by law, on an Event of Default, Port may, at its option: (a) exercise any and all remedies provided for in the Lease and Loan Agreement, and (b) if Port terminates the Lease and Loan Agreement pursuant to its terms, declare this Note immediately due and payable.
3. Borrower may prepay the principal balance and accrued interest, if any, on this Note without penalty.
4. Borrower promises to pay interest on the unpaid principal amount of each Advance from the Port Loan Due Date until the principal amount is paid in full, at the annual rate defined in the Lease and Loan Agreement.
5. Unless the Port directs otherwise, each payment to the Port must be made by wire according to wire instructions provided by the Port. The Port will make entries on the allonge to reflect the date and application of each payment.
6. This Note has been executed and delivered in, and shall be governed by and construed in accordance with the laws of, the State of California. Borrower hereby irrevocably submits to the jurisdiction of any state or any federal court sitting in San Francisco County, California, in any action or proceeding brought to enforce, or otherwise arising out of or relating to, this Note and hereby waives any objection to venue in any such court and any claim that such forum is an inconvenient forum.
7. Borrower waives presentment for payment, protest, and notice of protest for nonpayment of this Note and waives trial by jury in any action under or relating to this Note. Any

notice, other communication, or payment required or permitted hereunder shall be in writing and shall be deemed to have been given on delivery to the address provided in the Lease and Loan Agreement.

[SIGNATURE PAGE FOLLOWS]

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Borrower has duly executed this Promissory Note (China Basin Park - Mission Rock) as of the date written below.

Executed at San Francisco, California on _____.

[Borrower Name],
[Borrower Entity Description]

[Signature Block(s)]

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ALLONGE TO PROMISSORY NOTE

PORT ADVANCES

Date	Port Advance Amount	Notes

PAYMENTS ON THE PROMISSORY NOTE

Date of Payment	Amount Paid	Principal Balance on Payment Date	Accrued Interest Balance on Payment Date	Amount Applied to Principal	Amount Applied to Interest

SCHEDULE 12.1(a)

PORT'S SPONSORSHIP STANDARDS

Mission Rock Parks Sponsorship Guidelines

The Port of San Francisco is a public enterprise agency of the City and County of San Francisco. The Port is responsible for 7.5 miles of San Francisco waterfront from Hyde Street Pier in the north to India Basin in the south. The Port develops, markets, leases, administers, manages, and maintains over 1,000 acres of land. The Port does not intend by accepting advertising to convert its property into an open public forum for public discourse, debate or expressive activity. Rather, because of the Port's role as part of the economic backbone of the City, the Port is committed to supporting the growth of waterfront jobs and providing space for new and expanding businesses on Port property. The Port accepts sponsorships as a means of generating revenue to support its operations. In furtherance of this discrete and limited objective, the Port retains control over the nature of Sponsorships accepted for posting on Port property and maintains its advertising and sponsorship opportunities as a limited public forum. As set forth in subsequent sections, these Guidelines prohibit advertisements and sponsorships that could detract from the Port's goal of generating revenue or interfere with the safe and welcoming environment for the public. Through these Guidelines, the Port intends to establish uniform, viewpoint-neutral standards for the display of advertising and sponsorships on Port property. These Guidelines may be amended from time to time, provided that Port shall meet and confer with Tenant regarding potential impacts to the Budget before amending these Guidelines as applicable to Tenant and the Premises.

Standards

A. Permitted Sponsorship Content

The following classes of advertising are authorized on Port property if the advertising does not include any material that qualifies as Prohibited Sponsorships, as described in subsection (B) below:

1. Commercial and Promotional Sponsorships. Sponsorships that promote or solicit the sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for commercial or noncommercial purposes or more generally promotes an entity that engages in such activities.
2. Governmental Sponsorships. Notices or messages from government entities, meaning public entities specifically created by government action, that advance specific government purposes.
3. Public Service Announcements and Sponsorships. Announcements which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public or a significant segment of the public and relate to:
 - Prevention or treatment of illnesses;
 - Promotion of safety or personal well-being;
 - Education or training;
 - Art or culture;
 - Provision of children and family services;
 - Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
 - Provision of services and programs that provide support to low income residents, seniors and people with disabilities.

B. Prohibited Sponsorship Content

Advertising and sponsorships are prohibited on Port property if it includes any content that falls under one or more of the following categories:

1. Political and Public Issue. Any material that promotes or opposes a political party, promotes or opposes any state or local ballot measure or the election of any candidate or group of candidates for federal, state, judicial or local government offices.
2. False or Misleading. Any material that is or the sponsor reasonably should have known is false, fraudulent, misleading, deceptive, or would constitute a tort of defamation or invasion of privacy.
3. Copyright, Trademark or Otherwise Unlawful Infringement. Any material that infringes on any copyright, trade or service mark, title or slogan.
4. Obscenity or Pornographic. Any material that is obscene or pornographic.
5. Defamation or Lawless Action. Any material that is clearly defamatory or advocates imminent lawlessness or violent action.
6. Tobacco or Nicotine Advertising. Any material that constitutes commercial advertising of tobacco or nicotine.
7. Firearm Advertising. Any material that constitutes commercial advertising of firearms or ammunition.
8. Alcohol. Any material that constitutes commercial advertising of alcohol. However, Port or City property, including the Premises, used for operation of a concessionaire, kiosk, restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted by Law, shall be exempt from the alcoholic beverage advertising prohibition.
9. Profanity and Violence. Any material that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, the act of killing, mutilating or disfiguring human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal, or that depicts weapons or devices that appear to be aimed or pointed at the viewer or observer in a menacing manner.
10. Port Graphics and References. Any material that contains Port graphics, logos or representations without the express written consent of the Port.
11. Cannabis. Any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

Sponsorship Administration

Tenant shall be responsible for the daily administration of the sponsorship program in a manner consistent with these guidelines and with the terms and conditions of their lease with the Port.

Tenant shall post the following language with every advertisement, in a size and location approved by the Port (such approval not to be unreasonably withheld, conditioned or delayed):
"The views expressed in this advertisement do not necessarily reflect the views of the Port of San Francisco."

Every sponsor or permittee on the premises must comply with the advertising standards set forth in this Policy, as they may be amended from time to time. Every sponsor or permittee on the premises must display only those sponsorships that are in compliance with these guidelines.

|

SCHEDULE 19.9
HAZARDOUS MATERIAL DISCLOSURE

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PIER 1
SAN FRANCISCO, CA 94111

MANAGEMENT AGREEMENT

No. _____

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

[MANAGER]

**PASEO AND OPEN SPACE
MISSION ROCK PROJECT**

**ELAINE FORBES
EXECUTIVE DIRECTOR
SAN FRANCISCO PORT COMMISSION
KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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MANAGEMENT AGREEMENT INFORMATION TABLE

<i>Date:</i>	
<i>Agreement Number:</i>	
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Manager:</i>	_____, a
<i>Manager's Main Contact Person and Mailing Address:</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE SUBMITTING TO LEGAL] Telephone: () Cell: () Facsimile: () Email:
<i>Manager's Billing Contact and Address:</i>	[NOTE: PLEASE INCLUDE EVEN IF BILLING ADDRESS IS THE SAME AS MANAGER'S ADDRESS—DELETE BRACKETED LANGUAGE BEFORE COMPLETING BLI] Telephone: () Cell: () Facsimile: () Email:
<i>Manager's Emergency Contact and Address:</i>	[NOTE IF SAME AS MAIN CONTACT—DELETE BRACKETED LANGUAGE BEFORE COMPLETING BLI] Telephone: () Cell: () Facsimile: () Email:
<i>Manager's Insurance Contact and Address (not broker):</i>	Note if same as Main Contact Telephone: () Cell: ()

	Facsimile: () Email:
<i>Contact Information for Manager's Agent for Service of Process:</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE COMPLETING BLI]
<i>Premises:</i>	<p>The “Premises” is comprised of:</p> <p><i>Parcel 1:</i> Dr. Maya Angelou Way Paseo, identified as APN 8719B-001; and</p> <p><i>Parcel 2:</i> Bridgeview Way Paseo, identified as APN 8719A-007; and</p> <p><i>Parcel 3:</i> Channel Street Open Space, identified as APN 8719C-004; and</p> <p><i>Parcel 4:</i> Westerly portion of Toni Stone Crossing, identified as APN 8719B-003; and</p> <p><i>Parcel 5:</i> Middle portion of Toni Stone Crossing, identified as APN 8719A-009; and</p> <p><i>Parcel 6:</i> Easterly portion of Toni Stone Crossing, identified as APN 8719A-010; and</p> <p><i>Parcel 7:</i> Dr. Maya Angelou Way, identified as APN 8719C-002; and</p> <p><i>Parcel 8:</i> Bridgeview Way, identified as APN 8719D-001; and</p> <p><i>Parcel 9/10/11:</i> [berms within Parcel K, Bridgeview cul de sac, walkway along MR Commons]</p> <p>in the City and County of San Francisco, State of California, each as further described in <i>Exhibit A</i>.</p> <p>The term Premises refers to the property that is subject to this Agreement from time to time, as may be adjusted as provided in <i>Section 3.2</i>, and will include all Improvements and alterations as and when constructed thereon.</p>
<i>Term (§4.1):</i>	One (1) 15-year term, as further described in <i>Section 4</i> .
<i>Termination (§4.2):</i>	<p>Manager may terminate prior to the Expiration Date upon ninety (90) days written notice to the Port, as further described in <i>Section 4.2(a)</i>.</p> <p>Port may terminate prior to the Expiration Date upon ninety (90) days written notice to Manager, as further described in <i>Section 4.2(b)</i>.</p>
<i>Renewal Options (§4.3):</i>	Three (3) Port options to extend, each for five (5) years, as further described in <i>Section 4.3</i> .

<i>Commencement Date:</i>	The date on which the Premises is released from the Master Lease (as defined below) and accepted by Port pursuant to Subsection 14.7(c) of the DDA (as defined below), and subject to approval of this Agreement by the Port Commission and the Board of Supervisors and Mayor.
<i>Expiration Date:</i>	Unless earlier terminated or extended in accordance with this Agreement, the Expiration Date will be the date that is fifteen (15) years after the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then the Expiration Date shall be calculated from the first day of the first month after the Commencement Date.
<i>Management Fee:</i>	Management Fee is further described in Section 2 .
<i>Annual Budget; Quarterly and Annual Reporting Obligations:</i>	Each annual operating budget and capital budget must be approved by Port, as further described in Section 5 . Quarterly Report required within sixty days after the end of each calendar quarter and Annual Report provided on or prior to April of each year, both as further detailed in Section 5.7(a) .
<i>Environmental Security:</i>	TBD
<i>Maintenance and Repairs:</i>	During the Term and subject to an early termination otherwise contemplated in this Agreement, Manager will have the sole responsibility for maintaining the Premises in good order and condition equal to or better than other first-class public rights-of-way with private business use and public open space projects in California in accordance with Exhibit D . Manager may, but is not obligated to, complete Subsequent Horizontal Construction and any new improvements that did not exist on the Commencement Date, subject to Port's prior written approval.
<i>Private Use Restrictions (§7):</i>	Manager expressly acknowledges that the Premises are financed in part with tax-exempt bonds and are subject to limits by the Internal Revenue Code of 1986 (the "Code"). The Port must strictly limit Private Payments and Private Use within the meaning of Code section 141. The Manager must provide to the Port for review and approval all agreements, licenses, rentals or similar arrangements providing priority use for any person or entity other than the Port or Department of the City prior to entering into such arrangement, except as expressly set forth in this Agreement.

<p><i>Permitted Use; Prohibited Uses (§8):</i></p>	<p>The Premises shall be used as public rights-of-way and public open space. Manager must receive prior approval from the Port for any other use. Manager shall maintain and operate the Premises in accordance with Sections 7 and 8, and Exhibit D. Portions of the Premises may also be used for private business activities solely in accordance with Section 7 below, with prior approval by the Port of the private business use before any such arrangement is entered into by the Manager; provided that outdoor dining within the Private Use Areas pursuant to a Private Use Agreement in accordance with this Agreement shall be deemed approved by the Port.</p> <p>Any other use within the Premises requires the prior written consent of Port, which may be withheld in its sole discretion.</p> <p>Prohibited Uses are specified in Section 8 below.</p> <p>Port shall have all remedies set forth in this Agreement, and at law or equity in the event Manager performs any of the Prohibited Uses.</p>
<p><i>Utilities and Services:</i></p>	<p>In addition to the maintenance and management obligations described in this Agreement, Manager must manage the use and payment of: (a) electricity and (b) recycled water service on the Premises.</p>
<p><i>Annual Certifications:</i></p>	<p>Annually, within 30 days after Port's request to complete the "Manager Contact Information Sheet" in the form attached hereto as Exhibit E, Manager shall provide Port with the completed and executed Manager Contact Information Sheet.</p>
<p><i>Prepared By:</i></p>	

[Remainder of page intentionally left blank.]

Management Agreement

(Mission Rock Open Spaces)

This Management Agreement, dated for reference purposes only as of the Date set forth in the Management Agreement Information Table, above, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as owner, and the party identified in the Management Agreement Information Table as Manager (“**Manager**”).

Port and Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns with respect to the Master Lease, “**Horizontal Developer**”), are parties to that certain Disposition and Development Agreement dated as of August 15, 2018 (as the same has been and may be amended, supplemented, modified and/or assigned from time to time, the “**DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same has been and may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as “Mission Rock” as more particularly described in the DDA and Master Lease (the “**Project Site**”). The Premises are a portion of the Project Site and have been released from the Master Lease. Concurrent with this Agreement, Manager has entered into that certain Lease No. L- and Loan Agreement with Port for China Basin Park (the “**Park Lease**”). For the avoidance of doubt, nothing in this Agreement shall modify or affect the Horizontal Developer’s obligations and responsibilities under the DDA or the Master Lease.

The Parties intend this Agreement to constitute one part of: (i) the “Management Agreement” as defined in the Rate and Method of Apportionment of Special Taxes for City and County of San Francisco Special Tax District No. 2020-1 (Mission Rock Facilities and Services) (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**RMA**”), and (ii) the “Management Agreement” as defined in the Mission Rock Master Declaration of Restrictions recorded in the Official Records of San Francisco County on June 25, 2020 as Instrument No. 20209K94434400080 (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Declaration**”), and the Manager shall constitute the “Public Space Manager” as defined in the Master Declaration.

1. PURPOSE; MANAGEMENT AGREEMENT INFORMATION TABLE.

1.1. *Qualified Management Agreement.* The Parties intend for this Agreement to be a qualified management contract with respect to facilities financed with proceeds of governmental or 501(c)(3) tax-exempt bonds, in accordance with Internal Revenue Service Revenue Procedure 2017-13, as that document may be modified, amplified, and/or superseded. The Parties agree to interpret this Agreement to qualify as such a management contract and, to the extent any provision or provisions of this Agreement conflict with or would otherwise imperil the qualification of this Agreement by a relevant regulatory body, including the Internal Revenue Service, as such a management contract, those provisions shall be deemed null and void. The Parties will take all actions necessary, including amending this Agreement when needed to be a qualified management contract under Internal Revenue Service Revenue Procedure 2017-13, as that document may be modified, amplified, and/or superseded. The Parties shall work in good faith to mutually agree upon replacement provisions which are consistent with the intent of this Agreement and allow this Agreement to remain a qualified management contract.

1.2. *Management Agreement Information Table.* The Management Agreement Information Table that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this Management Agreement and shall be construed as a single instrument and referred to herein as this “**Agreement.**” In the event of any

conflict or inconsistency between the Management Agreement Information Table and the Management Agreement provisions, this Agreement will control.

2. MANAGEMENT FEE; COST REIMBURSEMENT; CONTINGENT SERVICES SPECIAL TAXES.

2.1. Management Fee. The Parties hereby agree to the value and sufficiency of the consideration described in this Section. Port will pay Manager an annual Management Fee totaling Ten Thousand Dollars (\$10,000.00) (the “**Management Fee**”). The annual Management Fee identified above shall be prorated for the first year based on a 365-day calendar year in accordance with Commencement Date of this Agreement. Thereafter the Management Fee shall be adjusted annually by any change in CPI.

(a) **Revenue from Premises Offsets Management Fee.** The Parties anticipate that Manager will receive revenue from the leasing, licensing, and/or other private use of a portion of the Premises in accordance with the limitations and procedures set forth in **Section 7**. Port’s obligation to pay the Management Fee shall be offset by the revenues Manager receives or derives from such leasing, licensing, and/or other private use of the Premises (“**Premises Revenues**”), as if such rent, license fee, or other revenue were received by Port and directed to Manager as payment of a portion of Port’s Management Fee obligation.

(b) **In-Lieu Payment by Master Association.** Funds received by Manager from the Master Association for the Premises are “**Master Association Contributions**.” Port shall have no obligation to pay Manager the Management Fee so long as Manager receives one or more Master Association Contributions that, when aggregated with any Premises Revenues for the year, are equal to or are greater than the Management Fee in a given year. In this circumstance and for the avoidance of doubt, the Parties acknowledge both the non-monetary value to Manager of a Contingent Services Special Tax Levy equal to zero dollars and further that Manager will receive Master Association Contributions for Manager’s services and obligations under this Agreement from the Master Association in lieu of payment from Port.

(c) **Partial Payment by Master Association.** If Manager receives one or more Master Association Contributions in a given year that, when aggregated with any Premises Revenues for the year, are less than the Management Fee, then Port, upon levying the Permitted Contingent Services Special Tax Levy Amount as described in **Section 2.4(a)(iii)**, below, shall pay to Manager funds so that the combined value of Master Association Contributions, Premises Revenues, and amounts paid by Port to Manager in a year equal one hundred percent (100%) of the Management Fee.

2.2. Port Contribution. Notwithstanding **Section 2.1** and subject to Port’s sole and absolute discretion, Port may contribute funds, resources, or both to Manager in furtherance of the operations or programming of the Premises. Any Port contribution shall be subject to such terms and conditions as Port may define prior to the contribution and Manager’s acceptance of such contribution and accompanying terms and conditions.

2.3. Cost Reimbursement. In addition to the Management Fee, Manager shall be entitled to reimbursement for reasonable costs expended in accordance with the Budget. Manager shall be reimbursed as follows: first, from Master Association Contributions; second, as direct payments from Port upon levy of the Contingent Services Special Tax but only to the extent Master Association Contributions in a given year are less than twenty-five percent (25%) of the Maximum Contingent Services Special Tax Revenues under the RMA; and third, as may be directed by Port in its sole and absolute discretion.

2.4. Contingent Services Special Taxes. During the Term, the Permitted Contingent Services Special Tax Levy Amount shall be calculated pursuant to this Section, and which amount shall be subject to Port Commission approval with each annual Budget.

(a) **Initial Permitted Contingent Services Special Tax Levy Amount.**

Based on the Initial Budget approved by the Port Commission, the “Permitted Contingent Services Special Tax Levy Amount” shall be defined depending on the status of this Agreement and the Park Lease, as follows:

(i) Zero Dollars (\$0.00), if this Agreement and the Park Lease are both in effect and the Master Association provides revenues to Manager equal to or greater than the Maximum Contingent Services Special Tax Revenues under the RMA; or

(ii) No more than seventy-five percent (75%) of the Maximum Contingent Services Special Tax Revenues under the RMA, if this Agreement is in effect but the Park Lease is not in effect, so long as the Master Association provides to Manager Master funds equal to or greater than twenty-five percent (25%) of the Maximum Contingent Services Special Tax Revenues under the RMA.

(iii) as shown in the table below for demonstrative purposes only. Provided further, that if funds provided by the Master Association to Manager for the Premises are less than twenty-five percent (25%) of the Maximum Contingent Services Special Tax Revenues under the RMA, then the Permitted Contingent Services Special Tax Levy Amount shall increase so that the combined value of the Master Association Contributions plus the revenue, if fully levied, from the Contingent Services Special Tax equals one hundred percent (100%) of the Maximum Contingent Services Special Tax Revenues under the RMA.

Permitted Contingent Services Special Tax Levy Amount:	\$0.00*	75%*
Status of this Agreement:	In Effect	In Effect
Status of Park Lease:	In Effect	Not in effect
* Amount or percentage may increase pending Master Association Contribution to Manager as described in <i>Section 2.4(a)(iii)</i> .		

(b) Manager shall calculate the Permitted Contingent Services Special Tax Levy Amount for each scenario described in ***Section 2.4(c)***, below, for submission and approval with each annual Budget.

(c) **Future Permitted Contingent Services Special Tax Levy Amount.**

After the Initial Budget year, Manager’s future calculations of the Permitted Contingent Services Special Tax Levy Amount shall be based on actual expenses from one or more prior years using the following formulas, unless otherwise mutually agreed by the Parties:

(i) If this Agreement and the Park Lease are both in effect, then Zero Dollars (\$0.00).

(ii) If this Agreement is in effect but the Park Lease is not in effect, then an amount equal to the product of (1) the then-current Maximum Contingent Services Special Tax Revenues under the RMA, and (2) a fraction in which the numerator equals the actual operation and maintenance costs applicable to the Park Lease in the most recently concluded year, and the denominator equals the sum of the actual operation and maintenance costs applicable to both this Agreement and the Park Lease, inclusive of any applicable Management Fee; as shown in the formula below for demonstrative purposes only.

Permitted Contingent Special Services Tax Levy Amount	=	Max. Contingent Services Special Tax Revenues (current)	X	<div style="border-bottom: 1px solid black; display: inline-block; width: 100%;"> Park Lease O&M prior costs </div> <div style="display: inline-block; width: 100%;"> Park Lease O&M prior costs + Management Agreement O&M prior costs </div>
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3. ACCESS RIGHTS. In consideration of the stated conditions and agreements, Port hereby grants permission to Manager to manage, operate, and otherwise carry on the Permitted Use within the Premises described in the Management Agreement Information Table and *Exhibit A* attached hereto. Manager's access rights in this Agreement are revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the Premises for the Permitted Use.

3.1. Adjustment of Premises.

(a) **Mutual Adjustment of Premises.** From time to time during the Term, the Parties reserve the right, upon mutual agreement of Port and Manager, to modify the Premises, including to accommodate the completion of the Subsequent Horizontal Construction and any subsequent Improvements as approved by Port.

(b) **Memorandum of Technical Corrections.** In addition, the Parties reserve the right, upon mutual agreement of Port and Manager, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof such memoranda shall be deemed to become a part of this Agreement.

3.2. Encroachment.

(a) If Manager or its Agents uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Manager shall immediately vacate such Encroachment Area and pay as an additional charge for each day Manager used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Manager uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Manager or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Agreement (including Manager's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Manager shall pay to Port an additional charge in the amount of Two Hundred Dollars (\$200) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Manager has failed to vacate the Encroachment Area, then Manager shall pay to Port an additional charge in the amount of Three Hundred Dollars (\$300) for each additional Notice to Vacate, if applicable, delivered by Port to Manager following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will

incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Manager's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Agreement, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of **Section 15** (Indemnity and Exculpation) shall also apply to Manager's and its Agents' use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Manager shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Manager in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, reasonable attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Agreement, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

3.3. Accessibility Inspection Disclosure. Manager is hereby advised that the Premises has not been inspected by a Certified Access Specialist ("CASp") and Port will have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards.

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

3.4. San Francisco Disability Access Disclosures. Manager is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Manager understands and agrees that Manager may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws and Manager fails to address the noncompliance, whether by partial closure or as otherwise contemplated in this Agreement. As further set forth in and subject to the terms of **Section 9**, Manager further understands and agrees that during this Agreement, it is Manager's obligation, at no cost to Port, to cause Manager's use and operation of the Premises to be in compliance with the ADA and any other federal or state disability access Laws in effect as of the date of this Agreement. During this Agreement it is Manager's obligation, at no cost to Port, to cause any Alterations or Improvements to the Premises performed by or on behalf of Manager, to be in compliance with the ADA and any other federal or state disability access Laws in effect as of the date of such Alteration or Improvements. Port acknowledges it will be responsible for, and that Manager shall have no obligation to, cause the Premises to be in compliance with any changes to the ADA and any other new or changed federal or state disability access Laws that both: (a) become effective after the date of this Agreement, and (b) impose an affirmative obligation to comply prior to or regardless of any Alterations or Improvements. Manager will notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.5. Proximity of Development Project. Manager acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Management Agreement Information Table, is being constructed on the Premises or on property in the vicinity of the Premises. Manager is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in inconvenience to or disturbance of Manager. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Manager hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

3.6. As-Is Condition. Manager acknowledges and agrees that Manager is familiar with the Premises, the Premises are being accepted in their then-existing and as-is condition, with no representations, warranties, or other obligations of Port, including but not limited to the repair or construction of any Improvements or alterations, and subject to all applicable Laws governing their use, occupancy and possession. Manager represents and warrants to Port that Manager acknowledges its receipt of *Schedule 3* regarding the presence of certain Hazardous Materials, *Schedule 2* regarding the condition of the substructure, if any, and the FEMA disclosure notice attached as *Schedule 3.7*. Manager further represents and warrants to Port that Manager has investigated and inspected, either independently or through agents of Manager's own choosing, the condition of the Premises and the suitability of the Premises for Manager's business and intended use. Manager acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for Manager's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.7. Release and Waiver. As part of its agreement to accept the Premises in their "As Is With All Faults" condition (but excluding any express obligation of Port or breach by Port of any express representation, warranty, or covenant in this Agreement), Manager, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Manager may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the Permitted Use, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City. Notwithstanding the foregoing, the releases and waivers in this Section shall not be applicable to any default by Port in the performance of any of Port's obligations under this Agreement.

3.8. Port's Right to Institute Rules and Regulations. Port may impose Rules and Regulations related to public rights-of-way and public open space, energy, water, gas, and other matters within Port jurisdiction reasonably necessary for the proper use, operation and maintenance of public rights-of-way, public parks, and public open space within Port jurisdiction. Upon Manager request, Port shall meet and confer with Manager before imposing Rules and Regulations applicable to the Premises. Port hereby confirms that no Rules and Regulations currently exist for the Premises. Manager agrees to be bound by such reasonable Rules and Regulations Port later imposes; provided that no such Rules or Regulations shall impose restrictions or requirements that are materially more onerous than comparable rules and

regulations generally applicable to public rights-of-way and public open space, unless such Rules and Regulations are (a) specific to a unique feature, aspect, or characteristic of the Premises (including but not limited to the management and operation of the Premises), and (b) reasonable, as determined by the Port Commission. Manager also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Manager to any damages.

4. TERM; TERMINATION.

4.1. Term. The Term of this Agreement (the "**Term**") will be for the period of years specified in the Management Agreement Information Table, commencing on the Commencement Date and expiring on the Expiration Date, subject to renewal as set forth in **Section 4.3**, unless earlier terminated.

4.2. Termination Rights.

(a) Manager Termination. Manager may terminate this Agreement prior to the Expiration Date upon ninety (90) days written notice to Port if:

(i) The City levies the Contingent Services Special Tax above the Permitted Contingent Services Special Tax Amount Levy, as defined in **Section 2.4**; or

(ii) One or more Specified Related Agreements terminate due solely to Port's default under that agreement (and such default was not caused by circumstances outside Port's reasonable control), and Port and Manager are unable to agree on appropriate compensation (or either Party fails to fulfill or comply with such agreement) for the costs of non-potable water used in the either the Premises or the areas previously covered by the terminated agreement(s); or

(iii) Manager demonstrates to Port, in Port's reasonable discretion, that all Manager funds presently held or anticipated by Manager are less than the amount of funds reasonably necessary to operate and maintain the Premises in accordance with this Agreement and otherwise comply with any new rules, regulations, or other requirements imposed upon Manager; and upon such demonstration, Port, in its sole and absolute discretion, chooses not to provide funds reasonably adequate to fill the applicable funding gap.

(b) Port Termination. Port may terminate this Agreement prior to the Expiration Date upon ninety (90) days written notice to Manager if:

(i) The Park Lease, or any other Specified Related Agreement, is terminated due solely to Manager's default under that agreement (and such default was not caused by circumstances outside Manager's reasonable control), and Port and Manager are unable to agree on appropriate compensation for the costs of non-potable water used in the areas previously covered by the terminated agreement(s); or

(ii) Upon any third notice of Event of Default within a thirty-six (36) month period, and regardless of Manager's prior cure, so long as the notices do not arise exclusively from a single event or occurrence; or

(iii) An uncured Event of Default is continuing, pursuant to **Section []**; or

(iv) Port does not obtain approval for this Agreement as may be required in accordance with pursuant to subsection 15 of Charter Section 10.104, as it may be amended from time to time ("Proposition J"); or

(v) Notwithstanding **Sections 4.2(b)(ii)** or **4.2(b)(iii)**, upon a failure to strictly comply with the prohibitions against private use described in **Section 7** of this Agreement, so long as such failure is identified in writing to Manager and Manager has not

resolved such failure within thirty (30) days, to Port's satisfaction, in Port's sole and absolute discretion (individually and collectively, "4.2(b)(v)").

4.3. *Renewal Options.* Subject to Manager's compliance with the terms of this Agreement and continued tenancy under the Park Lease, Manager grants to Port three (3) options ("Renewal Options") to extend the Term, each for an additional five (5) years (each, a "Renewal Term"). Each Renewal Term will commence upon the date after the applicable Expiration Date upon the same terms and conditions of this Agreement unless otherwise expressly agreed by the Parties.

5. ANNUAL BUDGETS, REVENUES, ACCOUNTING, BOOKS & RECORDS.

5.1. *Initial Budget.*

(a) **First Year.** The Parties have agreed upon an initial annual operating budget and initial capital budget (collectively, the "**Initial Budget**") for the operation, maintenance, and repair of the Premises during the remainder of the first fiscal year of the Term, or other such time period agreed upon by the Parties. The Initial Budget is attached hereto as Exhibit B.

(b) **Budget Benchmark.** The Parties agree that each annual budget for the Premises, inclusive of the Operating Budget, Capital Budget, and Management Fee, shall be equal to or exceed twenty-five percent (25%) of the Maximum Contingent Services Special Tax Revenues under the RMA (the "**Budget Benchmark**"), unless later revised as described in **Section 5.1(c)**. If the budget exceeds twenty-five percent of the Maximum Contingent Services Special Tax Revenues under the RMA, then Manager shall identify appropriate sources of funds for such excess.

(c) **Methodology to Calculate Budget Benchmark.** The Parties agree that they may, by mutual agreement, revise the Budget Benchmark as a percentage of the Maximum Contingent Services Special Tax Revenues under the RMA based on actual expenses from one or more prior years using the following formula: an amount equal to the product of (1) the then-current Maximum Contingent Services Special Tax Revenues under the RMA, and (2) a fraction in which the numerator equals the actual operation and maintenance costs applicable to this Agreement in one or more recently concluded years, and the denominator equals the sum of the actual operation and maintenance costs applicable to both this Agreement and the Park Lease (or, if the Park Lease has been terminated, the area that was subject to the Park Lease prior to such termination) in the same year(s), each inclusive of any respective Management Fee; as shown in the formula below for demonstrative purposes only.

Future Budget Benchmark Amount	=	Max. Contingent Services Special Tax Revenues (current)	X	$\frac{\text{Management Agreement O\&M prior costs}}{\text{Park Lease O\&M prior costs} + \text{Management Agreement O\&M prior costs}}$
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5.2. *Annual Operating Budget and Capital Budget.*

(a) Prior to the expiration of the Initial Budget, and on an annual basis thereafter, Manager will prepare and submit to Port an operating budget for Port's approval in its reasonable discretion ("**Operating Budget**") for the Premises for the following fiscal year (or portion thereof as agreed to by Port) and an updated capital budget ("**Capital Budget**") for the Premises for the following five (5) fiscal years in similar forms to the Initial Budget (or as otherwise requested by Port). Each budget approved by Port during the Term will be referred to

herein as the “**Budget.**” The Operating Budget shall be limited to operating expenses, including maintenance and repair costs, and shall exclude capital expenses that extend the useful life of the Premises, or a feature or component thereof, and reconstruction or replacement of the same.

(b) Port will review and respond to Manager, including listing any specific objections to such proposed budget, within thirty (30) calendar days after receipt of such proposed budget. If Port fails to respond to such proposed budget within such thirty (30) calendar day period, then Manager will deliver to Port a second notice requesting Port’s response (“**Second Budget Notice**”). The Second Budget Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: **“APPROVAL REQUEST FOR MISSION ROCK OPEN SPACE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIFTEEN (15) CALENDAR DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.”** If Port fails to respond within fifteen (15) calendar days after Port’s receipt of the Second Budget Notice, then such non-response will be deemed to be approval of such proposed budget. If Port timely objects to a proposed budget and the Parties cannot mutually agree upon an updated budget prior to the commencement of the fiscal year, then the Port shall be deemed to have approved a budget equal to the prior year’s Budget. Any revision to or modification of the deemed-approved budget beyond the variance permitted in *Section 5.3*, below, shall be subject to Port review and approval as described in this Section.

(c) No later than forty-five (45) days after the end of each quarter, Manager shall provide Port with a quarterly budget update for informational purposes only. Each quarter, Port or Manager may request a reforecasting of the Budget for the remainder of the fiscal year. Port approval for a Budget reforecast shall only be required if the reforecast Budget includes deviations from the then-current Budget that would require Port consent or approval pursuant to *Section 5.3*. In the event of an anticipated Budget shortfall, Port may request information from the Manager regarding Manager’s intended approach to address the Budget shortfall.

(d) In preparing each Operating Budget and Capital Budget, (i) Manager may consult with the Master Association to the extent required in connection with the portion of the budgets relating to association dues, and (ii) after the third year of the Term, Port and Manager shall meet to discuss funding sources for costs associated with maintenance and operation of the Premises and any other public open spaces operated or maintained by Manager within the Mission Rock STD.

5.3. Permitted Budget Variance. Manager will utilize commercially reasonable, good faith efforts to operate the Premises without exceeding the parameters of the Initial Budget and subsequent Budgets; provided however, that (i) Manager shall have no obligation to spend amounts set forth in the Budget, and (ii) Manager’s failure to operate the Premises within the Initial Budget or any subsequent Budget parameters will not be deemed a default by Manager hereunder unless such failure was the result of Manager’s failure to act in good faith or Manager’s failure to obtain Port’s consent to any expenditures or variances as required hereunder. Without limiting the foregoing, Manager will not make expenditures for the operation and maintenance or improvement of the Premises in any fiscal year that would deviate from the Budget by twenty-five percent (25%) or more of the corresponding line item in the applicable Budget for such fiscal year, without obtaining Port’s prior written consent, in Port’s reasonable discretion. Subject to the foregoing, Manager will have the right, without obtaining Port’s prior written consent, to the following (each, a “**Permitted Variance**”):

(a) re-allocate or increase Operating Expenses within the Operating Budget subject to the following conditions:

(i) re-allocation or increases shall not increase the total Operating Budget unless operating expenses are solely funded by additional identified funds, including Master Association Contributions;

(ii) subject to the prior condition, re-allocation or increases cannot result in the total Operating Budget exceeding 125% of the previously-approved Operating Budget;

(iii) re-allocation is prohibited from the WPA line item, unless there is a corresponding decrease in WPA costs; and

(b) re-allocate capital expenses within the Capital Budget, but any re-allocation shall not increase the total Capital Budget.

(c) Expense variances beyond those identified above shall require the Port's prior written approval.

(d) In the event of an emergency, as reasonably determined by Manager, Manager may seek oral approval from the Port's Executive Director or the Director's designee to make expenditures in excess of applicable line items in the Budget for: (i) emergency repairs required to prevent further immediate damage to property or injury to persons, or (ii) expenses required to ensure the general safety of the public, but after oral approval will follow the procedures set forth in this Section in reallocating funds seeking an amendment to the Budget, or including the costs of such repairs or expenses in a future Budget.

5.4. Annual Budget Reconciliation. No later than March 31st for each fiscal year during the Term, Manager will deliver to Port a reasonably detailed written statement (each an "**Annual Reconciliation**") setting forth (i) Manager's final determination of the actual Operating Expenses and Capital Expenses incurred with respect to the operation, maintenance and repair of the Premises for the immediately preceding fiscal year and (ii) the amount of any variance between the actual Operating Expenses and Capital Expenses incurred for the immediately preceding fiscal year and the estimated amounts for such Operating Expenses and Capital Expenses set forth in the applicable Budget for such fiscal year.

5.5. Premises Revenue Allocation. Premises Revenue will be first used to offset the Management Fee. If Premises Revenues exceed the Management Fee, excess revenues shall offset the Management Fee for each of the following three years. If Premises Revenues are adequate to pre-pay or have pre-paid the Management Fee for three (3) years, then all excess Premises Revenue shall be dedicated to Port and either transferred to Port or used as expressly directed by Port.

5.6. Separate Accounting. Manager shall separately account for all funds received (sources) and expended upon (uses), or otherwise related to the Premises, including operating expenses, capital expenses, Premises Revenue, Master Association Contributions, and the Management Fee.

5.7. Reporting.

(a) **Quarterly Report.** Within sixty (60) days after the end of each calendar quarter, Manager will deliver to Port a quarterly report for the Premises ("**Quarterly Report**") including: (i) actual operating expenses and actual capital expenses plus an updated proposed budget based on known changes to Master Association Contributions, Premises Revenues, Port contributions, operating expenses, and/or capital expenses, and (ii) any Private Use Agreements entered into during the prior quarter. Port may request additional information in its reasonable discretion.

(b) **Annual Report.** Prior to April 1 of each year, Manager will deliver to Port an "**Annual Report**" for the previous calendar year that includes a narrative on Park operations for the prior calendar year, and the following:

(i) The Annual Report must identify as separate line items for the Premises: actual Premises Revenues, Master Association Contributions, Port contributions and any other revenue or income related to the Premises, operating expenses, and capital expenses.

The Annual Report must also contain a summary of improvements, maintenance, and activities on the Premises during the prior calendar year, including but not limited to:

(ii) A table summarizing the material terms of any new Private Use Agreement, or other agreement affecting the Premises with a term equal to or greater than one year and entered into during the prior calendar year, in substantially the same format attached as *Exhibit C*; and

(iii) A premises evaluation report that will be prepared by a qualified professional conducting an annual inspection and evaluation of the condition of the Premises using applicable provisions of a maintenance evaluation methodology mutually agreed upon by the Port and Manager consistent with this Management Agreement; and

(iv) Copies of each Private Use Agreement entered into during the prior calendar year; and

(v) The amount of any budget surplus or deficit to be carried over from a previous calendar year.

5.8. Books and Records. Manager will make available to Port during the Term, upon no less than ten (10) business days prior written notice to Manager, complete and accurate Books and Records that contain all information required to permit Port to verify total Gross Revenues and deductions and exclusions therefrom that are in accordance with this Agreement and with generally accepted accounting practices consistently applied, or other such method as is reasonably acceptable to Port, from period to period with respect to all operations of the business to be conducted in or from the Premises and will retain such Books and Records for a period of the later of (i) three (3) years after the end of each calendar year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the Parties hereto, until such audit or controversy is terminated (the “**Audit Period**”).

5.9. Audits. Port Representatives will have the right, from time to time, to examine and/or cause a complete audit (but not to make copies, unless in connection with discovery in the course of litigation) of any or all Annual Reconciliations and Manager’s Books and Records. In connection with any such examination and/or audit, Port Representatives will have the right, from time to time, to request, in a written notice given to Manager (each, a “**Records Request**”), that Manager make, or cause to be made, available to Port Representatives, at the Premises or at Manager’s principal office within the City and County of San Francisco, the Books and Records relating to any Audit Period. Manager, within thirty (30) days after Manager’s receipt of any Records Request (each such 30-day period, a “**Submission Period**”), will make, or cause to be made, available to Port Representatives the Books and Records requested by Port in such Records Request, which Books and Records will be sufficient to permit an accurate determination of Operating Expenses and Capital Expenses for the applicable Audit Period. If, with respect to any Records Request, Manager fails to make, or cause to be made, available the Books and Records requested by such Records Request at the Premises or at Manager’s principal office within the City and County of San Francisco within the applicable Submission Period (a “**Records Default**”) and such Records Default will continue for a period of ten (10) Business Days following written notice thereof to Manager, such Records Default will constitute an immediate Event of Default by Manager hereunder. For purposes of this Section, the phrase “make available” or other words of similar import will be deemed to require that Manager make, or cause to be made, the Books and Records requested by any Records Request available to Port representatives at Manager’s election, either at the Premises or at Manager’s principal office within the City and County of San Francisco. Notwithstanding anything to the contrary herein, unless there is a continuing Event of Default by Manager under this Agreement, Port will not initiate a new audit more than one time in any calendar year.

6. MAINTENANCE OBLIGATIONS, OPERATING REQUIREMENTS.

6.1. General Maintenance Standard. Manager will have the sole responsibility for maintaining the Premises in good order and condition equal to or better than first-class public rights-of-way and open space projects in California.

6.2. Manager's Role to Fulfill Certain Port Obligations. Port intends for Manager to fulfill Port's maintenance, operations, management, and reporting obligations identified in the following agreements on behalf of Port: (a) that certain Memorandum of Understanding Regarding Jurisdiction, Acceptance, and Maintenance of Public Improvements at the Mission Rock Special Use District, (b) that certain Interdepartmental Master Encroachment Permit and Maintenance Agreement (Mission Rock – Phase 1) between Port and City Department of Public Works (the "IMEP"), and (c) Recycled Water Purchase Agreement, and each of which have been transmitted in their entirety, including exhibits, attachments, and appendices to Manager. **Exhibit D** is a compilation of the maintenance, operations, management, and reporting obligations required of Manager as understood by the Parties. The Parties agree that **Exhibit D** may, by mutual agreement, be updated, revised, amended, or substituted and that such alteration or substitution shall not constitute a material change so long as **Exhibit D** continues to implement the general maintenance standard set forth in **Section 6.1** and truly and accurately reflects Port's contractual obligations identified in this **Section 6.2**.

6.3. Paseos. Manager expressly agrees to follow and apply the maintenance, operations, management, and reporting standards identified in the IMEP throughout the Premises for like materials and installations, including within the Dr. Maya Angelou Paseo and Bridgeview Paseo.

7. PRIVATE USE RESTRICTION.

7.1. Private Use. The Permitted Use shall include private business use(s), as defined in Internal Revenue Code Section 141 and 26 Code of Federal Regulations Section 1.141-3 and as it may be amended, revised, or superseded ("**Private Use**"), only to the extent authorized in this **Section 7**, which section shall be strictly interpreted in furtherance of the purposes of this Agreement as described in **Section 1.1**, above. For the avoidance of doubt, the Parties understand that seating and table space that is (a) in fact available for public use on a first-come, first-served basis and consistent with 26 Code of Federal Regulations Section 1.141-3(c), and (b) not exclusively reserved or dedicated for any food or beverage services or other non-State or local governmental entities, or natural persons engaged in a trade or business, is not currently considered a Private Use and is therefore a Permitted Use.

7.2. Private Use Areas. Maximum Private Use Areas and associated uses are depicted and described in **Exhibit E**. Manager shall manage and collect revenue from any Private Use Area in strict accordance with the square footage limitations and use restrictions described in **Exhibit E**, and the terms and conditions of this section.

7.3. Private Use Agreements. Port developed a form agreement attached as **Exhibit F** (the form "**Private Use Agreement**") that Manager may execute with persons engaged in a trade or business, including ground-floor tenants of adjacent buildings, for use of one or more Private Use Areas. Each Private Use Agreement is subject to, and shall be null and void unless compliant with, the following conditions.

(a) The counterparty entering the Private Use Agreement cannot be subject to an active debarment or suspension order from the City; and has not in the last ten (10) years, and is not currently, subject to an eviction or other enforcement order prosecuted by or for the Port. To comply with this provision, Manager shall:

(i) confirm that the applicable counterparty is not listed as a suspended or debarred entity as reported by the City, which information is publicly available at

<https://sf.gov/resource/2022/suspended-and-debarred-contractors> (or other City database specified by the Port in writing that is accessible to Manager); and

(ii) include representations in its form agreements that the applicable counterparties (A) are not subject to an active debarment or suspension order from the City, and (B) have not been debarred or suspended by the City in the last ten (10) years, and (C) are not currently, subject to an eviction or judicial action or other enforcement order prosecuted by or for the Port; and

(iii) for any agreement with a term of more than one (1) year, provide advance notice to Port of each proposed counterparty to a Private Use Agreement prior to execution to confirm eligibility.

(b) Each Private Use Agreement must subject the counterparty to a cross-default provision with any contract with the Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion;

(c) Each Private Use Agreement must include indemnification and waiver of claims clauses similar to the provisions in **Section 15** (Indemnity and Exculpation);

(d) Each Private Use Agreement must state that the counterparty must comply with all applicable Laws and every applicable condition of this Agreement;

(e) Each Private Use Agreement must include a provision where the counterparty expressly waives any and all relocation assistance and benefits in connection with this Agreement to the extent permitted by applicable Laws;

(f) Each Private Use Agreement must include a provision where the counterparty expressly agrees to report the Private Use Agreement to the County Assessor in accordance with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute);

(g) Each Private Use Agreement must include insurance provisions requiring that the counterparty's liability and other insurance policies name **"THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES"**;

(h) Each Private Use Agreement must be consistent with this Management Agreement; and

(i) Each Private Use Agreement must be fully disclosed without redaction to the Port within thirty (30) days of execution.

(j) Manager must receive no less than the applicable parameter rate (rent or fee) in effect at the time of execution of each Private Use Agreement, except for counterparties operating during a temporary community-oriented offering, such as a farmers' market, craft market, or food truck. Community-oriented offerings on the Premises are limited to no more than [five (5)] days per year. For the avoidance of doubt, the Parameter Rental Rate Schedule for Fiscal Year 2023-2024 to be applied to each Active Edge Agreement is identified within the "Open Land, Pier and Airspace Rates" category as "Improved Land & Sidewalk (including outdoor dining)."

8. USE OF THE PREMISES.

8.1. Permitted Use. The Premises shall be used and occupied only for the Permitted Use specified in the Management Agreement Information Table and for no other purpose; provided that Manager shall not be in breach or default under this Agreement if Manager has taken commercially reasonable steps generally consistent with public rights of way and public open space in San Francisco to prevent the occurrence of Prohibited Uses by Persons other than

Manager or Manager's Agents on the Premises. Any other use within the Premises requires the prior written consent of Port, which may be withheld in Port's sole discretion.

8.2. Prohibited Uses. Manager agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Agreement, are strictly prohibited and are considered Prohibited Uses:

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) camping;
- (c) sleeping when the Premises or a portion thereof is closed, unless associated with an event at a reserved facility and within a designated area;
- (d) drug use;
- (e) consuming alcohol or carrying open containers unless expressly approved, such as at a reserved facility, within a designated area, or at a permitted establishment, or as may otherwise be lawful;
- (f) climbing or affixing items to buildings, trees, lawn, or furniture, except as otherwise permitted;
- (g) using amplified sound, unless within a designated area or such use is otherwise in compliance with Laws and required Regulatory Approvals;
- (h) panhandling;
- (i) disorderly conduct, including fighting, yelling, disturbing other Premises users, or defying directions from Manager, Manager's staff, or its Agents;
- (j) peddling and vending merchandise without a permit;
- (k) lighting fires or cooking except in any designated areas or with a permit;
- (l) littering or dumping waste;
- (m) graffiti, placing stickers, posting flyers, or otherwise defacing property;
- (n) removing or damaging plants, soil, furnishings, or other fixtures from the Premises;
- (o) feeding or harassing animals or harming their natural habitat;
- (p) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (q) any activity which constitutes waste or nuisance;
- (r) any activity which will in any way injure, obstruct or interfere with the rights of owners or occupants of adjacent or surrounding properties, including, but not limited to, rights of ingress and egress;
- (s) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (t) construction staging for any construction occurring off the Premises, unless Manager obtains both Port's written consent and all relevant permits;

(u) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids, or the washing of any vehicles or equipment;

(v) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, unless Manager obtains both Port's written consent and all relevant permits; or

(w) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, unless Manager obtains both Port's written consent and all relevant permits.

8.3. Notice of Prohibited Use Charge. In the event Port determines after inspection that Prohibited Uses are occurring due to Manager's direct action or Manager's failure to take commercially reasonable steps generally consistent with other public rights-of-way and open space in San Francisco to prevent the occurrence of Prohibited Uses in operating the Premises, Port will notify Manager of the Prohibited Use and Manager will promptly commence commercially reasonable steps generally consistent with other public rights-of-way and open space in San Francisco to prevent the occurrence of Prohibited Uses and will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Manager to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) that Manager has not taken commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses, then Manager will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Manager. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Manager's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights under this Agreement, at law or in equity. By signing this Agreement, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

9. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

9.1. Compliance With Laws. Manager, at Manager's sole cost and expense, promptly shall comply with all Laws relating to or affecting Manager's use of the Premises and services under this Agreement.

9.2. Regulatory Approval. Manager understands that Manager's activity on the Premises may require Regulatory Approvals from Regulatory Agencies. Manager shall be solely responsible for obtaining any such Regulatory Approvals, and Manager shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Manager. Port, at no cost to Port, will reasonably cooperate with Manager in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Agreement. Port may elect in Port's sole discretion to participate as co-permittee for one or more Regulatory Approvals. Manager shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Manager shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could adversely affect use or occupancy of other areas controlled or owned by the Port or would create obligations on

the part of the Port (whether on or off of the Premises) to perform or observe (other than fees that would be reimbursed by Manager), unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion. Port will join in any application by Manager for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this section.

Any fines or penalties imposed as a result of the failure of Manager to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Manager, and Port shall have no liability, monetary or otherwise, for the fines and penalties. Manager in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Manager will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Manager will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. No Port Approval will limit Manager's obligation to pay all costs of complying with any conditions or restrictions. To the fullest extent permitted by Law, Manager agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of Manager's failure to obtain or comply with the terms and conditions of any Regulatory Approval, except to the extent that such Claim arises solely from the willful misconduct or gross negligence of the Port acting in its proprietary capacity.

9.3. *Port Acting As Owner of Property.* By signing this Agreement, Manager agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Agreement in its capacity as a landowner with a proprietary interest in all or a portion of the Premises, and not as a Regulatory Agency of City with certain police powers, and (iv) Manager is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the Premises. Accordingly, Manager understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Manager to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the Premises. Manager hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

10. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

10.1. *Utilities.* Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Premises. Except as may be otherwise provided in the Management Agreement Information Table, Manager shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Manager; provided that Port shall take such actions as are reasonably necessary to enable Manager to obtain utilities. Manager will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Manager, Manager may seek another provider.

10.2. *Services.* Port has no responsibility or liability of any kind with respect to the provision of any services to Manager, or on, in, or to the Premises. Manager shall make arrangements and shall pay all charges for all services to be furnished on, in, or to the Premises, or to be used by Manager, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

10.3. Maintenance and Repair. Manager shall at all times during the Term, at its sole cost and expense, maintain and repair in good and working order, condition and repair the Premises and all improvements and alterations thereon. For the avoidance of doubt, repair generally includes those actions and activities that maintain the normal operating condition of the Premises, or a feature or component thereof; repair generally excludes those actions or activities that extends the useful life of the Premises, or a feature or component thereof. In the event that Manager or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the Premises or any other Port property, Manager shall be responsible to repair the same. In the event Manager fails to promptly commence efforts to maintain the Premises or repair any damage to the Premises caused by Manager or its Agents, Port may maintain or repair the same at Manager's sole cost and expense and Manager will promptly reimburse Port therefor. Except in the event of an emergency, Port will first provide no less than fourteen (14) calendar days prior notice to Manager before commencing any maintenance or repair pursuant to this Section. If Manager does not commence maintenance or repair or provide assurances reasonably satisfactory to Port that Manager will commence maintenance or repair of the same within such fourteen (14) calendar day period (subject to reasonable extension for planned events and sponsorship activities that interfere with non-emergency maintenance or repair), then Port may proceed to take the required action. This provision shall survive the expiration or earlier termination of this Agreement.

11. RISK OF LOSS.

Notwithstanding Manager's obligations under **Section 15** (Indemnity and Exculpation) and **Section 16** (Hazardous Materials), ultimate risk of loss or damage for any casualty to the Premises, regardless of the cause, shall remain with the Port, including to the extent such casualty or Claim is not covered by Manager's insurance as required under **Section 12** (Insurance). Manager shall reasonably cooperate to assist Port with any and all damages, claims, or failures related to the Premises, including but not limited to compiling evidence and reports, and filing, processing, and collecting on claims as may be authorized in writing by Port.

12. INSURANCE.

12.1. Required Insurance Coverage. Manager, at its sole cost and expense, will maintain, or cause to be maintained, throughout the Term, the following insurance (provided, (i) for the avoidance of doubt and without limiting Manager's obligations if the Park Lease is not in effect, while the Park Lease is in effect, the same insurance policies carried by Manager under the Park Lease shall satisfy the requirements of this Agreement, and (ii) if the Park Lease is terminated and this Agreement remains in effect, Manager may carry such lesser insurance as the City's Risk Manager determines is commercially reasonable):

(a) **Commercial General Liability Insurance.** Comprehensive or "Commercial General Liability" insurance, with limits not less than Forty Million Dollars (\$40,000,000.00) each occurrence combined single limit for bodily injury (including death) and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Manager is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards; personal and advertising liability, and the products-completed operations. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) **Liquor Liability and Food Products Liability.** If Manager has (or is required under Laws to have) a liquor license and is selling or distributing or allows (irrespective of whether Manager has a liquor license) alcoholic beverages on the Premises, or is selling or distributing food products on the Premises, then liquor liability coverage with limits not less than Five Million Dollars (\$5,000,000) each occurrence, and food products liability insurance with

limits not less than Five Million Dollars (\$5,000,000) each occurrence, and Manager will require any Operator, Agent, or Subtenant (including licensees or concessionaires) who has (or is required under Laws to have) a liquor license and who is selling, allowing, or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Manager's policies.

(c) **Automobile Insurance.** Manager will maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Manager's use and occupancy of, and activity at, the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than the limits required for commercial general liability insurance for each occurrence combined single limit.

(d) **Environmental Liability Insurance.** During the course of any Hazardous Materials Remediation activities, Manager will maintain, or require by written contract that its remediation contractor or remediation consultant will maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Five Million Dollars (\$5,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of Port (such approval not to be unreasonably withheld, conditioned or delayed).

(e) **Construction Activities.** At all times during any period of Manager's construction of Improvements or Alterations,

(i) Manager will cause Manager's Agents (including Manager's contractor) to carry such insurance coverage and limits as will be reasonably approved by Port and the City's Risk Manager, taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Manager will carry "Builder's All Risk" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(iii) Manager will require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Manager for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000.00) each claim and Ten Million Dollars (\$10,000,000) in the aggregate, with respect to all professional services provided to Manager therefor.

(f) **Special Events/Participants.** For any event at the Premises, Manager, Event Venue Users, concessionaires or Agents, as applicable, must maintain Special Events/Participants Liability Insurance (GL) acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(g) **Workers' Compensation; Employer's Liability.** Manager will carry (if applicable) and will require Manager's Agents to carry Worker's Compensation Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each (if any).

(h) **Personal Property Insurance.** Manager, at its sole cost and expense, will procure and maintain on all of Manager's Property and Alterations, in, on, or about the Premises, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Manager's sole discretion, for the replacement of Manager's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Manager by Port pursuant to this Agreement in such amounts as Port deems reasonably appropriate and Manager will have no interest in the proceeds

of such personal property insurance. Port will have no responsibility or obligation to maintain insurance or replace Manager's Property, Alterations, or any Improvements regardless of cause of loss.

(i) **Sexual Molestation.** For any Event where minors are present, sexual molestation and abuse coverage with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(j) **Other Coverage.** Not more often than every year and upon not less than sixty (60) days prior written notice, in connection with the annual budget process Port may require Manager to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be: (i) required by Law, (ii) reasonably required by the City's Risk Manager, or (iii) as is reasonably prudent for private operators of public parks and open spaces similar in size, character, age and location as the Premises with respect to risks comparable to those associated with the use of the Premises.

12.2. *Claims-Made Policies.* If any of the insurance required in **Section 12.1** above is provided under a claims-made form of policy, Manager will maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Agreement, to the effect that should occurrences during the Term give rise to claims made after termination of this Agreement, such claims will be covered by such claims-made policies.

12.3. *Annual Aggregate Limits.* If any of the insurance required in **Section 12.1** above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit will be double the occurrence limits specified herein.

12.4. *Payment of Premiums.* Manager will pay the premiums for maintaining all required insurance.

12.5. *Waiver of Subrogation Rights.* Notwithstanding anything to the contrary contained herein, Port and Manager (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Agreement or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises; provided, the failure to obtain any such endorsement will not affect the above waiver.

12.6. *General Insurance Matters.*

(a) All liability insurance policies required to be maintained by Manager hereunder will contain a cross-liability clause, will name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, COMMISSIONERS EMPLOYEES AND AGENTS,**" will be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Agreement, and will provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Manager hereunder will be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

Manager's compliance with this Section will in no way relieve or decrease Manager's liability under this Agreement.

(c) All insurance policies required to be maintained by Manager hereunder will be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Manager and Port.

(d) Manager will deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Manager's broker will complete the insurance questionnaire and submit all required documentation. Manager will, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

13. NOTICES.

Except as otherwise expressly provided in this Agreement or by Law, all notices (including notice of consent or non-consent) required or permitted by this Agreement or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Management Agreement Information Table, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Manager in Manager's written response to Port's written request for such information.

All notices under this Agreement shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

14. DEFAULT BY MANAGER; REMEDIES.

14.1. *Event of Default.* The occurrence of any one or more of the following events shall constitute a default ("**Event of Default**") by Manager:

(a) failure to pay to Port any sum payable hereunder when due, and such default continues for a period of five (5) business days following written notice from Port; or

(b) failure of Manager or its Agents to use the Premises solely for the Permitted Use, as determined by Port in its reasonable discretion, and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that if such default cannot reasonably be cured within such twenty-four (24) hours, Manager will not be in default of this Agreement if Manager commences to cure the default within such period and diligently and in good faith continues to cure the default; or

(c) failure of Manager to take commercially reasonable steps generally consistent with other public rights-of-way and open space in San Francisco to prevent the occurrence of Prohibited Uses by Persons other than Manager or its Agents, in conjunction with the occurrence of such Prohibited Uses, and such failure continues for a period of ten (10) days following written notice from Port; or

(d) an Event of Default under the WPA (as defined under the WPA), which Event of Default continues without cure for five (5) Business Days after written notice from Port; provided, however, if such Event of Default cannot reasonably be cured within such five (5) day period, Manager will not be in default of this Agreement if Manager commences to cure the Event of Default within such five (5) day period and diligently and in good faith continues to cure the Event of Default, provided, however, without limitation of the foregoing, the Parties agree for purposes of this subsection that Manager's internal meetings to determine the path to cure such Event of Default will be deemed to be a commencement of cure; or

(e) an assignment, or attempted assignment, of this Agreement by Manager, and such assignment continues without cure for a period of five (5) business days after written notice by Port. For the avoidance of doubt, Port will notify Manager of its conclusion that an assignment in violation of this Agreement has occurred, which conclusion may be revised after meeting and conferring with Manager regarding the assignment, as well as Manager's actions in response to notice of Port's conclusion; or

(f) failure by Manager to maintain any insurance required to be maintained by Manager under this Agreement, or failure by Manager or Manager's broker to provide evidence of required insurance, or if any such insurance will be canceled or terminated or will expire or be reduced or materially changed, except as permitted in this Agreement, and Manager's or Manager's broker's failure to either maintain, or to deliver evidence of, such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(g) failure by Manager to comply with the provisions of **Section 16** below, and Manager's failure to cure the foregoing default within one (1) Business Day following written notice from Port; provided however, if such default cannot reasonably be cured within such one (1) Business Day, then Manager will not be in default of this Agreement if Manager commences to cure the default within such one (1) Business Day (which commencement includes Manager's internal meeting that determines the path to cure such default), and diligently and in good faith continues to cure the default, provided further, Manager will have no more than six (6) months to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days; or

(h) failure by Manager to discharge any lien or encumbrance placed on the Premises or any part thereof in violation of this Agreement, and such violation or failure continues without cure for a period of thirty (30) days following Manager's knowledge of such lien or encumbrance, including but not limited to written notice from Port specifying the nature of such violation or failure; or

(i) failure by Manager to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Agreement and required to be observed or performed by Manager and not specifically enumerated in this Section, and such failure continues without cure for a period of thirty (30) days after written notice by Port that specifies the nature of such failure; provided that if such failure is not capable of cure within such thirty (30) day period, Manager will have a reasonable period to complete such cure if Manager promptly undertakes action to cure and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port; provided further, Manager will have no more than ninety (90) days to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days; or

(j) Manager becomes bankrupt or insolvent or makes a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Manager any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such

proceedings are involuntary, Manager is not discharged from the same within one hundred eighty (180) days thereafter; or

(k) a receiver is appointed for a substantial part of the assets of Manager and such receiver is not discharged within one hundred eighty (180) days; and

(l) without limiting the provisions of *Sections 14.1(b), 14.1(c), or 14.1(g)*, or lengthening the cure periods under those subsections, failure by Manager to comply with Laws and Manager's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; provided however, if such default cannot reasonably be cured within such forty-eight (48) hour period, Manager will not be in default of this Agreement if Manager commences to cure the default within such forty-eight (48) hour period and diligently and in good faith continues to cure the default, provided further, Manager will have no more than thirty (30) days to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days.

14.2. Port's Remedies. Upon default by Manager, Port shall, without further notice or demand of any kind to Manager or to any other person, and in addition to any other remedy Port may have under this Agreement and at law or in equity, have the ability to immediately terminate this Agreement and Manager's right to use the Premises. Upon notice of any such termination, Manager shall immediately vacate and discontinue its use of the Premises and Port may take any and all action to enforce Manager's obligations.

15. INDEMNITY AND EXCULPATION.

15.1. General Indemnity. Subject to *Section 15.6*, Manager will Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and will defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Manager, or loss or damage to or destruction of any property occurring in, on, over, or under the Premises during Manager's services under this Agreement, (b) any default by Manager in the observance or performance of any of the terms, covenants or conditions of this Agreement, (c) the use, manner of use or services under this Agreement, or condition of the Premises or the activities therein by Manager, its Agents, Invitees, or concessionaires during Manager's services under this Agreement, (d) any construction or other work on the Premises permitted by Manager during Manager's services under this Agreement, or (e) any acts, omissions, or negligence of Manager, its Agents, or Invitees, in, on, over, or under the Premises.

15.2. Hazardous Materials Indemnity.

(a) Subject to *Section 15.6*, in addition to its obligations under *Section 15.1*, Manager agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition existing or occurring during the Term or pursuant to Manager's obligations under *Section _____*, and (ii) Manager's or Manager's Agent's Exacerbation of any Hazardous Material Condition during Manager's services under this Agreement.

(b) Manager's obligation to Indemnify the Indemnified Parties includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) actual sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) reasonable

attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Manager must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within five (5) business days after Port's payment demand and evidence reasonably supporting the demand.

15.3. *Scope of Indemnities.* Subject to **Section 15.6**, the Indemnification obligations of Manager set forth in this Agreement will be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Manager set forth in this Agreement will be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Agreement. Except as specifically provided otherwise, the Indemnification obligations of Manager set forth in this Agreement will exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Manager's obligation to Indemnify the Indemnified Parties, Manager specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Manager set forth in this Agreement, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Manager will begin from the first notice that any claim or demand is or may be made and will continue at all times thereafter until finally resolved.

15.4. *Exculpation and Waiver.* To the fullest extent permitted by law, Manager, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties will not be responsible for or liable to Manager, and Manager hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective systems, (v) construction defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Agreement prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes in, on, over, or under the Premises to the fullest extent permitted by law, but excluding any Claims arising from the Indemnified Parties' willful misconduct or gross negligence.

Manager understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement will remain effective. Therefore, with respect to the Claims released in this Agreement, Manager waives any rights or benefits provided by Section 1542 of the 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.

Initials:

Name:

Title:

Manager specifically acknowledges and confirms the validity of the release made above and the fact that Manager was represented by counsel who explained the consequences of the release at the time this Agreement was made, or that Manager had the opportunity to consult with counsel, but declined to do so.

15.5. *Not Limited by Insurance.* Manager's Indemnification obligations set forth in **Section 15.1** above and all of Manager's other Indemnification obligations set forth in this Agreement will not be limited by the amount of insurance proceeds that are available pursuant to the insurance coverage that Manager is required to maintain pursuant to this Agreement.

15.6. *Exclusions from Indemnifications, Waivers, and Releases.*

(a) Nothing in this Section relieves the Indemnified Parties from liability, nor will the Indemnities set forth in **Section 15.1**, (General Indemnity), **Section 15.2** (Hazardous Materials Indemnity), or the defense obligations set forth in **Sections 15.3** (Scope of Indemnities), or any other indemnification obligation of Manager under this Agreement extend to Claims:

(i) to the extent such Claim(s) exceed the limit defined in **Section 12.1(a)** for Manager's Commercial General Liability insurance, as applicable at the time of the Claim; or

(ii) caused by the gross negligence or willful misconduct of the Indemnified Parties; or

(iii) from third parties' claims for exposure prior to the Commencement Date to either Pre-Existing Hazardous Materials or to Hazardous Materials.

(b) If it is reasonable for an Indemnified Party to assert that a claim for Indemnification under this Section is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Manager in asserting a claim or claims under such insurance policy but without waiving any of its rights under this Section. Notwithstanding the foregoing, if an Indemnified Party is a named insured on a pollution liability insurance policy obtained by Manager, the Indemnification from Manager under this Section will not be effective unless such Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Manager pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Manager. For the avoidance of doubt, Manager shall have no obligation to obtain a pollution liability insurance policy.

15.7. *Survival.* The provisions of **Section 15** will survive the expiration or earlier termination of this Agreement.

16. HAZARDOUS MATERIALS.

16.1. Requirements for Handling. Neither Manager nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, over, or under the Premises, subject only to the following exceptions and provided that Handling is at all times in full compliance with all Environmental Laws: (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, (b) janitorial, office, cooking, or landscaping supplies or materials in such amounts as are customarily used for purposes similar to the Permitted Uses, (c) standard building materials and equipment that do not contain asbestos or asbestos containing materials, lead, or polychlorinated biphenyl (PCBs) for use in connection with maintenance and repairs in accordance with **Section 10.3**, and (d) Hazardous Materials that are or have been Handled for Remediation purposes under the jurisdiction of and as permitted by an Environmental Regulatory Agency.

16.2. Manager Responsibility. Manager agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its services under this Agreement, each of them:

(a) will not permit any Hazardous Materials (other than Pre-Existing Hazardous Materials) to be present in, on, over, or under the Premises except as permitted under **Section 16.1**;

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

16.3. Manager's Environmental Condition Notification Requirements.

(a) Manager must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Manager learns or has reason to believe Hazardous Materials were Released or, except as allowed under **Section 16.1**, Handled, in, on, over, or under the Premises, or emanating from the Premises, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under the Premises, or from any vehicle or vessel that Manager or its Agents or Invitees use on the Premises during Manager's services under this Agreement, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises during Manager's services under this Agreement, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Manager must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, over, or under the Premises or from any vehicles or vessels Manager, or its Agents and Invitees uses during Manager's services under this Agreement that Manager or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Manager or its Agents or Invitees receives from any Environmental Regulatory Agency with respect to the Premises;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Manager or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the

Premises, or from any vehicles or vessels Manager, or its Agents and Invitees uses on the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises during Manager's services under this Agreement;

(iv) Any Hazardous Material Claim that is instituted or threatened by any third party against Manager or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the Premises, or from any vehicles or vessels Manager, or its Agents and Invitees uses on the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises during Manager's services under this Agreement; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Manager or its Agents or Invitees for their operations at the Premises.

(c) Manager must notify Port of any meeting, whether conducted face-to-face or telephonically, between Manager and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Manager must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Manager's or its Agents' or Invitees' operations at the Premises. Manager's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Manager must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." Manager must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Manager must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Manager's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Manager must provide Port with an explanation of the basis for any claim of privilege and summary information regarding the parties to, the quantity and extent of, and the subject of such communications.

(f) Port may from time to time request, and Manager will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

16.4. Requirement to Remediate.

(a) Manager's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying Port in accordance with **Section 16.3(a)**, Manager must Remediate at its sole cost in compliance with all Environmental Laws and this Agreement, any Hazardous Material Condition occurring during the Term or caused by Manager or Manager's Agent's or Invitees Handling of Hazardous Materials during Manager's services under this Agreement, provided Manager may take any immediate actions to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition and will then provide notice to Port in accordance with **Section** . Manager must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by the applicable Regulatory Agency.

(ii) In addition to its obligations under clause (i), before this Agreement terminates for any reason, Manager must Remediate at its sole cost and in compliance with all Environmental Laws and this Agreement: (A) any Hazardous Material Condition caused by Manager's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Manager's services under this Agreement that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Manager's use of or changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Manager must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted. Port shall approve or disapprove of such Hazardous Materials Remediation plan promptly, but in any event within thirty (30) days, after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Manager must take all actions that are reasonably necessary in Port's reasonable judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Manager or its Agents or Invitees Exacerbate the Hazardous Material Condition, Manager will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Manager's services under this Agreement; or (ii) arising before the Commencement Date.

16.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under **Section 17** (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Manager's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Manager's responsibility under this Agreement.

16.6. Notification of Asbestos. Port hereby notifies Manager, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in **Schedule 1** attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in **Schedule 1** attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Manager hereby acknowledges receipt of the notification specified in the first paragraph of **Section 16.6** hereof and the notice or report attached as **Schedule 1** hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Manager further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information

to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Manager agrees that its waiver of Claims set forth in **Section 15** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and the potential consequences of such fact. Manager is aware that the presence, or possibility, of asbestos in or about the Premises may limit Manager's ability to repair or maintain the Premises without Manager first performing abatement of such asbestos. The presence of asbestos in the Premises and the removal or non-removal by Port of all or a portion of the asbestos in the Premises, will not, however, (a) entitle Manager to any Claim, or (b) relieve Manager of any of its obligations hereunder.

Notwithstanding any other provisions of this Agreement, Manager agrees to Indemnify Port for Manager's acts or omissions that result in (y) asbestos-related enforcement actions related to the Premises, including both administrative or judicial proceedings, and (z) any Claims related to the Premises arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

16.7. Notification of Lead. Port hereby notifies Manager of the potential presence of lead-containing and presumed lead-containing materials in the Premises. Disturbance or removal of lead is regulated by, among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and Port Building Code § 3424.

Manager agrees that its waiver of Claims set forth in **Section 15** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and the potential consequences of such fact. Manager is aware that the presence, or possibility, of lead in or about the Premises may limit Manager's ability to repair or maintain the Premises without Manager first performing abatement of such lead. The presence of lead in the Premises and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises, will not, however, (a) entitle Manager to any Claim, or (b) relieve Manager of any of its obligations hereunder.

Notwithstanding any other provisions of this Agreement, Manager agrees to Indemnify Port for Manager's acts or omissions that result in (y) lead-related enforcement actions related to the Premises, including both administrative or judicial proceedings, and (z) any Claims related to the Premises arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

16.8. Storm Water Pollution Prevention.

(a) Manager must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, and shall comply with the Mission Rock District Storm Water Pollution Prevention Plan ("SWPPP"), which is attached as **Exhibit F**.

(b) Post-Construction Requirements. In addition to requiring compliance with the permit requirements under **Section 16.8(a)**, Manager will comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

16.9. Presence of Hazardous Materials. Manager is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in **Schedule 1** attached hereto, naturally occurring asbestos, contamination

commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in **Schedule 16.9**, copies of which have been delivered to or made available to Manager. By execution of this Agreement, Manager acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 78700 and related Laws. Manager must disclose the information contained in this **Section 16.9** to any subtenant, licensee, transferee, or assignee of Manager's interest in this Agreement. Manager also acknowledges its own obligations pursuant to California Health and Safety Code Section 78700 as well as the penalties that apply for failure to meet such obligations.

16.10. Survival. The provisions of this **Section 16** (other than **Sections 16.6** and **16.7**) will survive the expiration or earlier termination of this Agreement, provided however that (a) Manager's obligations under **Sections 16.4** shall survive only with respect to Remediation obligations that first arise during the Term or are caused by Manager or Manager's Agents carrying out Manager's surviving obligations under **Section 16.4** and this Section after the Term, and (b) Manager's obligations under **Sections 16.1, 16.2, 16.3, and 16.8** shall survive only with respect to Manager and Manager's Agents who are carrying out Manager's surviving obligations under **Section 16.4** and this section.

17. PORT'S ENTRY ON PREMISES.

17.1. Entry for Inspection. Port and its authorized Agents shall have the right to enter the Premises without notice at any time for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Manager is complying with its obligations under this Agreement; to perform any necessary maintenance, repairs or restoration to the Premises in accordance with this Agreement; and to show the Premises to prospective Managers, tenants or other interested parties. Port agrees to give Manager reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth in this Section. Such notice shall be not less than twenty-four (24) hours' prior notice, except in the event of emergency. Manager shall have the right to have a representative of Manager accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Port's entry onto public areas of the Premises.

17.2. Emergency Entry. Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Manager's rights under this Agreement.

17.3. No Liability. Port shall not be liable in any manner, and Manager hereby waives any Claims against Port for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the Premises, or entry by the public (as Manager has a non-exclusive right to use the Premises) onto the Premises provided however that: (a) Manager's waiver excludes damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives, and (b) Port shall at its own cost and expense, and as soon as reasonably practicable, repair such damage and/or restore the Premises to substantially the same condition prior to the occurrence of damage caused by Port's or Port's Agent's non-emergency entry pursuant to **Section 17.1**.

18. IMPROVEMENTS AND ALTERATIONS.

Unless specified in the Management Agreement Information Table or otherwise approved in advance by Port in writing, Manager shall not make, nor suffer to be made, alterations or improvements to the Premises (including the installation of any trade fixtures affixed to the Premises or whose removal will cause injury to the Premises). Notwithstanding the foregoing,

the Parties shall use good faith efforts to approve the “Lounge” designed by 100architects if adequate funding becomes available.

19. CONDITION OF PREMISES UPON TERMINATION.

Upon the expiration or earlier termination of this Agreement, Manager shall ensure the Premises in the condition required by and consistent with **Section 6** (subject to ordinary wear and tear). Ordinary wear and tear will not include any damage or deterioration that would have been prevented by proper maintenance by Manager, or Manager otherwise performing all of its obligations under this Agreement. The Premises will be clean, free of debris, waste, and Hazardous Materials (other than Pre-Existing Hazardous Materials), and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the Commencement Date and any other encumbrances created or approved in writing by Port. On or before the expiration or earlier termination of this Agreement, Manager at its sole cost will remove from the Premises, and repair any damage caused by removal of, Manager’s Property, including any signage and alterations and improvements performed by Manager or its Agents and specified by Port. Except for those designated by Port, alterations and improvements will remain in the Premises as Port property.

Without any prior notice, Port may elect to retain or dispose of Manager’s personal property and any alterations and improvements that Manager has installed with or without Port’s consent that Manager does not remove from the Premises prior to the expiration or earlier termination of this Agreement. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of Manager’s abandoned property, and Manager waives all Claims against Port for any damages resulting from Port’s retention, removal and disposition of such property; provided, however, that Manager shall be liable to Port for all costs incurred in storing, removing and disposing of Manager’s abandoned property and repairing any damage to the Premises or the Facility resulting from such removal. Manager agrees that Port may elect to sell Manager’s abandoned property and offset against the sales proceeds Port’s storage, removal, and disposition costs without notice to Manager. Manager hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

Manager’s obligation under this Section shall survive the expiration or earlier termination of this Agreement.

20. ATTORNEYS’ FEES; LIMITATIONS ON DAMAGES.

20.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party’s performance or alleged non-performance under this Agreement, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys’ fees, which fees shall be payable whether or not such action is prosecuted to judgment. “**Prevailing party**” within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys’ fees under this Section shall include attorneys’ fees and all other reasonable costs and expenses incurred in connection with any appeal.

20.2. *City Attorney.* For purposes of this Agreement, reasonable fees of attorneys of the City’s Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in Law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

20.3. *Limitation on Damages.* Manager agrees that Manager will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Agreement, or

for any Claim based upon this Agreement, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Agreement). Manager's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Manager expressly waives all such liability.

20.4. *Non-Liability of City Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Manager, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Manager, its successors and assigns, or for any obligation of City and/or Port under this Agreement. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

20.5. *Limitation on Port's Liability Upon Transfer.* In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Agreement thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

21. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises and Manager acknowledges such reserved rights. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Manager and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, provided that such right will not be exercised so as to disturb or otherwise interfere with the Premises. In no event shall Port be liable to Manager for any Claims arising from the State's exercise of its rights nor shall such action entitle Manager to any additional of Fees or otherwise relieve Manager from any of its obligations under this Agreement.

22. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this Agreement are incorporated by reference as though fully set forth in this Agreement. The descriptions below are not comprehensive but are provided for notice purposes only; Manager is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Manager understands and agrees that its failure to comply with any provision of this Agreement relating to any such code provision shall be deemed a material breach of this Agreement and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Agreement shall have the meanings ascribed to them in the cited ordinance.

22.1. *Nondiscrimination.*

(a) Covenant Not to Discriminate. In the performance of this Agreement, Manager covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of

the Labor and Employment Code against any employee of Manager, any City and County employee working with Manager, any applicant for employment with Manager, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Manager in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Manager shall include in all contracts relating to the Premises a nondiscrimination clause applicable to such subtenant or other contractor in substantially the form of ***Section 22.1(a)*** above. In addition, Manager shall incorporate by reference in all sublicenses and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2(a), 12B.2(c) - (k) and 12C.3 of the Administrative Code) and shall require all contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Manager does not as of the date of this Agreement and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively “**Core Benefits**”) as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

(d) **CMD Form.** On or prior to the Agreement Commencement Date, Manager shall execute and deliver to Port the “Nondiscrimination in Contracts and Benefits” form approved by the CMD.

(e) **Penalties.** Manager understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Manager and/or deducted from any payments due Manager.

22.2. *Requiring Health Benefits for Covered Employees.* Unless exempt, Manager agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Manager shall provide the appropriate health benefit set forth in Section 121.3(d) of the HCAO.

(b) Notwithstanding the above, if Manager meets the requirements of a “**small business**” by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with ***Section 22.2(a)*** above.

(c) If, within 30 days after receiving written notice of a breach of this Agreement for violating the HCAO, Manager fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Manager fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the Premises entered into by Manager shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Manager shall notify the Office of Labor Standards

Enforcement (“**OLSE**”) when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Manager shall be responsible for ensuring compliance with the HCAO for each agent, Contractor and Subcontractor performing services on the Premises. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Manager based on the Sublicensee’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Manager with notice and an opportunity to cure the violation.

(e) Manager shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Manager represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Manager shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Manager shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensee, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Manager shall provide the City with access to pertinent records relating to any Manager’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Manager at any time during the Term. Manager agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor’s or Subcontractor’s contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

22.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Manager acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Manager acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Agreement.

22.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises (LBEs) in Manager’s operations. Manager agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities

for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

22.5. Indoor Air Quality. Manager agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

22.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Manager acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Manager acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all sublicenses or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

22.7. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Manager agrees to remove all graffiti from the Premises within forty-eight (48) hours of the earlier of Manager's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from Port or the Department of Public Works; provided however, if such graffiti cannot reasonably be removed within such period, Manager will not be in default of this Agreement if Manager diligently and in good faith continues to work to remove or abate such graffiti and actually completes such removal within thirty (30) days (or other reasonable period determined by the Port). The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Public Works Code, the Planning Code, or the Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.).

22.8. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Manager shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of

pesticides that Manager may need to apply to the Premises during the term of this Agreement, (ii) describes the steps Manager will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Manager's primary IPM contact person with the City. Manager shall comply, and shall require all of Manager's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Manager were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Manager to keep certain records and to report to City all pesticide use by Manager's staff or contractors. If Manager or Manager's contractor will apply pesticides to outdoor areas, Manager must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

22.9. *MacBride Principles Northern Ireland.* Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

22.10. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Manager not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Manager shall not provide any items to the construction of Alterations, or otherwise in the performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Manager fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Manager shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.11. *Preservative-Treated Wood Containing Arsenic.* Manager may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Manager may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Manager from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

22.12. *Notification of Limitations on Contributions.* If this Agreement is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this **Section 22.12** shall apply. Through its execution of this Agreement, Manager acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any

land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Manager acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Manager further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Manager; each member of Manager's board of directors, and Manager's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Manager; and any subcontractor listed in the Manager's bid or contract and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the contract. Additionally, Manager certifies that if this **Section 22.13** applies, Manager has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

22.13. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22.14. *Conflicts of Interest.* Through its execution of this Agreement, Manager acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Manager becomes aware of any such fact during the Term, Manager shall immediately notify the Port.

22.15. *Drug-Free Workplace.* Manager acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

22.16. *Prevailing Wages and Working Conditions.* Manager shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Manager shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Manager agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Manager shall include and shall require its agents, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Manager's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Manager shall also pay, and shall require its agents, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Labor and Employment Code Division II, Article 102 (formerly Administrative Code Chapter 21C): a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 102.3), a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

22.17. Public Transit Information. Manager shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Manager employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Manager's sole expense.

22.18. Food Service and Packaging Waste Reduction Ordinance. Manager agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Agreement, Manager agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Manager agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Manager's failure to comply with this provision.

22.19. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Manager agrees to comply with and be bound by all of the provisions of San Francisco Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; "**Article 142**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Manager who would be or are performing work at the Premises.

(b) Manager shall incorporate by reference the provisions of Article 142 in all sublicenses of some or all of the Premises, and shall require all sublicensee to comply with such provisions. Manager's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Manager and agents shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Manager and agents shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in **Section 22.19(c)** above. Manager and agents shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Manager and agents shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Manager or agents at the Premises, that the Manager or agent will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

(f) Manager and agents shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Manager and agents understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this Agreement, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

If Manager has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 142.8.

22.20. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Manager's improvements and alterations under this Agreement are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than the Threshold Amount (as defined in San Francisco Administrative Code Section 6.1) per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Manager agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Manager's improvements or alterations, Manager shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

Agreement shall include, and shall require its agents to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Manager shall

cooperate, and require its agents to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Manager's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

22.21. *San Francisco Bottled Water Ordinance.* Manager is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

22.22. *Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.* Manager shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Manager agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Agreement. Without limiting Port's other rights and remedies under this Agreement, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

22.23. *Manager's Compliance with City Business and Tax Regulations Code.* Manager acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Manager under this Agreement is withheld, then Port will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this **Section 22.23** to Manager, without interest, late fees, penalties, or other charges, upon Manager coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

22.24. *Consideration of Salary History.* Manager shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Manager for work that relates to this Agreement or for work to be performed in the City or on City property, Manager is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Manager shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Manager is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

22.25. *Employee Signature Authorization Ordinance.* The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That

ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a “card check” agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Manager shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its agents or operators.

23. WAIVER OF RELOCATION.

Manager hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar Law, statute or ordinance now or hereafter in effect, if and to the extent allowed under applicable Law.

24. SIGNS.

Except to the extent consistent with the Mission Rock Master Signage Plan, Manager shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the Premises without Port’s prior written consent. Any sign that Manager is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port’s Sign Guidelines, as revised by Port from time to time, the Mission Rock Master Signage Plan, and building permit requirements, and Manager shall obtain all Regulatory Approvals required by such Laws; provided, for the avoidance of doubt, that: (1) future revisions to the Port’s Sign Guidelines shall not require the removal or replacement of any signage that has already been installed unless expressly required by the Port Commission, and (ii) in the event of any conflict between the Port’s Sign Guidelines and the Mission Rock Master Signage Plan or other signage plan approved by the Port for Mission Rock, the Mission Rock-specific plan shall control. Manager, at its sole cost and expense, shall remove all easily-removable signs placed by it on the Premises at the expiration or earlier termination of this Agreement if so requested by Port, unless Port has expressly agreed to allow such sign(s) to remain after expiration or earlier termination of this Agreement.

25. MISCELLANEOUS PROVISIONS.

25.1. California Law; Venue. This Agreement is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City’s Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

25.2. Entire Agreement. This Agreement contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

25.3. Amendments. No amendment of this Agreement or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

25.4. Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law and in accordance with **Section 1.1**, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

25.5. Interpretation of Agreement.

(a) Unless otherwise specifically stated in this Agreement, where a Party has a right of approval or consent, such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

(b) References in this Agreement to Manager's acts or omissions will mean acts or omissions by Manager and its Agents, and Manager's Invitees to the extent Manager has not complied with Manager's obligations under **Section 8.1**, unless the context requires or specifically stated otherwise.

(c) Whenever an exhibit or schedule is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All exhibits and schedules are incorporated in this Agreement by reference.

(d) Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically provided. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Agreement. Wherever reference is made to any provision, term, or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Agreement in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Agreement.

(e) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Agreement and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Agreement are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(f) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(g) This Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Agreement must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Agreement.

(h) The party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(i) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of “waive” applies to “waiver,” “waivers,” “waived,” “waiving,” etc.).

(j) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Agreement occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

25.6. Successors. The terms, covenants, agreements and conditions set forth in this Agreement shall bind and inure to the benefit of Port and Manager and, except as otherwise provided herein, their personal representatives and successors and assigns.

25.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the Port or Manager and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns (“Manager Parties”), as applicable, from, and hold harmless the Indemnified Parties or Manager Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the Port or Manager Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the termination of this Agreement.

25.8. Counterparts. For convenience, the signatures of the parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute as one complete Agreement. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

25.9. Authority. Manager does hereby covenant and warrant that Manager is a duly authorized and existing entity, that Manager has and is qualified to do business in California, that Manager has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Manager are authorized to do so. Upon Port's reasonable request, Manager will provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

25.10. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Manager under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Manager requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Manager. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Agreement.

25.11. Time is of Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified. Except as otherwise provided herein, Port will provide Manager with its approval or disapproval of any matter requiring Port's approval in writing to Manager as soon as reasonably practical after Manager's written request and not later than twenty-five (25) calendar days, as calculated from Port's receipt of Manager's

complete written request; provided however that if Port's Executive Director, in consultation with the City Attorney's Office, reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, then the approval or disapproval shall be offered for consideration at the first Port Commission and subsequent Board of Supervisors hearings after receipt of Manager's written request, subject to notice requirements and reasonable staff preparation time.

25.12. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

25.13. Survival of Indemnities. Termination or expiration of this Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement (but solely as to matters that occurred and obligations first arising during the Term), the ability to collect any sums due, nor shall it affect any provision of this Agreement that expressly states it shall survive termination or expiration hereof.

25.14. Relationship of the Parties. Port is not, and none of the provisions in this Agreement shall be deemed to render Port, a partner in Manager's business, or joint venturer or member in any joint enterprise with Manager. Neither party shall act as the agent of the other party in any respect hereunder. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

25.15. No Recording. Manager shall not record this Agreement or any memorandum hereof in the Official Records of the City and County of San Francisco.

25.16. Additional Written Agreement Required. Manager expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

25.17. Waiver of Indirect or Consequential Damages. As a material part of the consideration for this Agreement, Manager shall not be liable to Port, and Port shall not seek and Port hereby waives any claims against Manager, for any punitive, indirect, consequential or special damages (including lost profits) due to the acts or omissions of Manager under this Agreement. Manager would not be willing to enter into this Agreement in the absence of a complete waiver of liability for punitive, indirect, consequential and special damages (including lost profits) due to the acts or omissions of Manager, and Port expressly assumes the risk resulting from such waiver.

25.18. Nonliability of Manager's Members, Partners, Shareholders, Directors, Agents, Officers, and Employees. No direct or indirect affiliate of Manager, or member, officer, partner, shareholder, director, board member, agent, or employee of Manager or a direct or indirect affiliate of Manager, shall be personally liable to Port, or any successor, for any default by Manager under this Agreement, and Port agrees that it shall have no recourse against any such Person with respect to any obligation of Manager under this Agreement, or for any amount that may become due Port or its successor or for any obligation or claim based upon this Agreement. No personal judgment shall be sought or obtained against any of the foregoing Persons in connection with this Agreement. Notwithstanding the foregoing, this Section shall in no way supersede federal, state, or municipal law (including but not limited to Chapter 28 of the San Francisco Administrative Code, the San Francisco Campaign and Governmental Conduct Code, and the San Francisco Police Code).

26. PORT FUNDS SUBJECT TO APPROPRIATION.

Funding for any Port or City obligations under this Agreement requires lawful appropriation of funds by the Port Commission and Board of Supervisors, and certification by the Controller. The Controller is not authorized to make payments on any agreement for which funds have not been lawfully appropriated and certified as available, whether in the budget or by supplemental appropriation.

27. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, MANAGER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS WILL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AGREEMENT WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

28. DEFINITIONS.

For purposes of this Agreement, the following terms have the meanings ascribed to them in this Section or elsewhere in this Agreement as indicated:

“**Active Edge Areas**” is defined in *Section ____*.

“**ACMs**” is defined in *Section 15.6*.

“**Agents**” when used with reference to either party to this Agreement or any other person, means the officers, directors, commissioners, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

“**Agreement**” is defined in *Section 1*.

“**Alterations**” means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

“**Annual Reconciliation**” is defined in *Section 5.4*.

“**Annual Report**” is defined in *Section 5.7(b)*.

“**Audit Period**” is defined in *Section 5.7*.

“**Books and Records**” means all of Manager's books, records, and accounting reports or statements relating to its business, this Agreement, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Manager's business operations for the Premises, whether maintained by Manager or a third-party contractor.

“**Budget**” is defined in *Section 5.2(a)*.

“**CMD**” means the Contract Monitoring Division of the City's General Services Agency.

“**Cal-OSHA**” means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

“**City**” is defined in *Section 1*.

“Claim” means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys’ fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

“Concession...” definitions [pending].

“Commencement Date” means the date specified in the Management Agreement Information Table.

“Contingent Services Special Tax” is defined in the RMA.

“CPI” means the Consumer Price Index for All Urban Consumers, Series ID CUURS49BSA0, as published by the U.S. Department of Labor, Bureau of Labor Statistics, applicable to San Francisco, California (or similar successor Series ID or index).

“Cure Period” means the period of time described in the Management Agreement Information Table.

“Encroachment Area” is defined in *Section 2.2*.

“Encroachment Area Charge” is defined in *Section 2.2*.

“Environmental Laws” means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Premises. Environmental Laws include the Risk Management Plan, Mission Bay Area, San Francisco, California as approved by the Regional Board on May 11, 1999, as amended and as interpreted by Regulatory Agencies with jurisdiction (**“RMP”**), deed restrictions recorded against the Premises and the Site Mitigation Plan approved by the San Francisco Department of Health, all as presently in effect or as further amended during the Term of this Agreement.

“Environmental Regulatory Action” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release, Exacerbation, or discovery of Hazardous Materials, including both administrative and judicial proceedings.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“Environmental Regulatory Approval” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

“Exacerbate” or **“Exacerbating”** when used with respect to Hazardous Materials means any act or omission that (i) increases the quantity or concentration of Hazardous Materials in the affected area, (ii) causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or (iii) otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of

Hazardous Materials does not constitute “**Exacerbation.**” Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Manager’s operations, Investigations, maintenance, repair, Improvements and Alterations under this Agreement. “**Exacerbation**” has a correlating meaning.

“**Expiration Date**” means the date specified in the Management Agreement Information Table.

“**Facility**” means the pier, building or other structure in or on which the Premises is located.

“**Fees**” means the Compensation (if monetary) and all other sums payable by Manager under this Agreement, including without limitation, any Late Charge and any interest assessed pursuant to *Section 4*.

“**Handle**” or “**Handling**” means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

“**Hazardous Material**” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Manager, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“**Hazardous Material Claim**” means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence (other than the un-Exacerbated presence of Pre-Existing Hazardous Materials) or Release or Exacerbation of any Hazardous Material, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any other Port property, the loss or restriction of the use or any amenity of the Premises or any other Port property, and attorneys’ fees and consultants’ fees and experts’ fees and costs.

“**Hazardous Material Condition**” means the presence (other than the un-Exacerbated presence of Pre-Existing Hazardous Materials), Release, or threatened Release of Hazardous Materials in, on, over or under the Premises, or from any vehicles or vessels Manager, or its Agents and Invitees uses during Manager’s services under this Agreement.

“**Initial Budget**” is defined in *Section 5.1*.

“**Improvements**” definition [pending].

“**Indemnified Parties**” is defined in *Section 14.1*.

“**Indemnify**” means to indemnify, protect, defend, and hold harmless forever. “**Indemnification**” and “**Indemnity**” have correlating meanings.

“**Interest Rate**” means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

“**Investigate**” or “**Investigation**” when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, and includes, without limitation, preparation and publication of site history, sampling,

and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“Invitees” means Manager’s clients, customers, invitees, patrons, guests, members, Managers, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them.

“Late Charge” means a fee equivalent to fifty dollars (\$50.00).

“Law” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require Manager’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Premises, whether in effect when this Agreement is executed or at any later time and whether or not within the present contemplation of the parties.

“Management Agreement Information Table” refers to the summary of basic management agreement information attached to this Agreement.

“Maximum Contingent Services Special Tax Revenues” is defined in the RMA.

“Mission Rock Long Term Reserve Fund” is defined in **Section []**.

“Mission Rock STD” means (i) the STD as defined in the RMA, and (ii) any areas which are contemplated for potential annexation into the Mission Rock STD pursuant to the terms of the RMA, regardless of whether or not such areas have been annexed.

“Premises” means the area described in the Management Agreement Information Table.

“Notice to Cease Prohibited Use” is defined in **Section 7**.

“Notice to Vacate” is defined in **Section 2.2**.

“OSHA” means the United States Occupational Safety and Health Administration.

“PACMs” is defined in **Section 15.6**.

“Permitted Activity” is means the activity described in the Management Agreement Information Table.

“Permitted Contingent Services Special Tax Levy Amount” is defined in **Section 2.4**.

“Port” is defined in **Section 1**.

“Port’s Termination Right” is defined in **Section []**.

“Premises Revenue” is defined in **Section 2**.

“prevailing party” is defined in **Section 20.1**.

“Pre-Existing Hazardous Materials” means any Hazardous Materials existing in, on, or under the Premises as of the Commencement Date.

“Prohibited Use” is defined in **Section 7**.

“Regulatory Agency” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in

its regulatory capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"Regulatory Approval" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, over or under the Premises.

"Remediate" or "Remediation" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "Remediation" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"RMA" is defined in the preamble to this Agreement.

"Second Budget Notice" is defined in *Section 5.2(b)*.

"SWPPP" is defined in *Section 16.8(a)*.

"Term" is defined in *Section 3*.

"Waiving Party" is defined in *Section 12.5*.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Port and Manager have executed this Agreement as of the last date set forth below

Manager: **[INSERT NAME]**

By: _____
Name: _____
Title: _____

Date signed: _____

By: _____
Name: _____
Title: _____

Date signed: _____

Port: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Scott Landsittel,
Deputy Director, Real Estate and Development

Date signed: _____

Approved as to Form: **DAVID CHIU, City Attorney**

By: _____
Justin Bigelow
Deputy City Attorney

Agreement Prepared by **[INSERT NAME]** , Commercial Property
Manager _____ (initial)

EXHIBIT A

PREMISES

(To be attached.)

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EXHIBIT B
INITIAL BUDGET

EXHIBIT C

FORM ANNUAL REPORT

- 1. jMOU**
- 2. IMEP**
- 3.**

EXHIBIT D

MANAGEMENT OBLIGATIONS

Manager shall comply with the Maintenance Obligations and Operating Requirements provisions as set forth in ***Exhibit C***.

- 4. CBP Lease §9**
- 5. IMEP**
- 6. jMOU**
- 7. Water Purchase Agreement**

EXHIBIT E

MANAGER CONTACT INFORMATION SHEET

PORT OF SAN FRANCISCO - Management Contact Information

Manager Name on Contractor:	
dba, if applicable:	

Main Agreement (Primary Contact : Recipient of Port general emails, mailings, notices, agreement admin, insurance & parking) REQ'D

Last Name	First Name	Middle Initial	Title
Mr / Mrs / Ms			
Address		City	State Zip Code
e-mail	Telephone	Cellular Phone	Fax

Billing (Recipient of all invoices, statements and billing issues) REQ'D ☐ Check if same as mailing address

Last Name	First Name	Middle Initial	Title
Mr / Mrs /			
Address		City	State Zip Code
e-mail	Telephone	Cellular Phone	Fax

Emergency (First person to be contacted in case of emergency) REQ'D ☐ Check if same as mailing address

Last Name	First Name	Middle Initial	Title
Mr / Mrs / Ms			
Address		City	State Zip Code
e-mail	Telephone	Cellular Phone	Fax

Legal Notice (Contact responsible for legal issues involving Management Agreement) REQ'D ☐ Check if same as mailing address

Last Name	First Name	Middle Initial	Title
Mr / Mrs / Ms			
Address		City	State Zip Code
e-mail	Telephone	Cellular Phone	Fax

Local/On-Site (Other than Primary Agreement Contact) NOT REQ'D ☐ Check if same as mailing address

Last Name	First Name	Middle Initial	Title
Mr / Mrs /			
Address		City	State Zip Code
e-mail	Telephone	Cellular Phone	Fax

Corporate (Other than Primary Agreement Contact. For information purposes only) NOT REQ'D ☐ Check if same as mailing address

Last Name	First Name	Middle Initial	Title
Mr / Mrs / Ms			
Address	City	State	Zip Code
e-mail	Telephone	Cellular Phone	Fax

Signature:	
Print Name:	
Date:	

Email: contact@sfport.com

MAIL to: Port of San Francisco
Attn: Real Estate Admin.
Pier One, San Francisco, CA 94111

EXHIBIT F

MISSION ROCK STORM WATER POLLUTION PREVENTION PLAN

SCHEDULE 1

ASBESTOS NOTIFICATION AND INFORMATION

(To be attached.)

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SCHEDULE 3

HAZARDOUS MATERIALS DISCLOSURE

SCHEDULE 3.7

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.



**CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR**

LICENSE NO. XXXX

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**PACIFIC GAS AND ELECTRIC COMPANY,
A CALIFORNIA CORPORATION**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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EXHIBITS

EXHIBIT A-1 DESCRIPTION OF LICENSE AREA

EXHIBIT B ESTOPPEL CERTIFICATE

EXHIBIT C SOIL MANAGEMENT PLAN

SCHEDULE 1 HAZARDOUS MATERIALS DISCLOSURE

SCHEDULE 2 FEMA DISCLOSURE NOTICE

BASIC LICENSE INFORMATION

<i>License Date:</i>	_____, 202XX
<i>License Number:</i>	
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400
<i>Licensee:</i>	PACIFIC GAS AND ELECTRIC COMPANY , a California corporation (“PG&E” or “Licensee”)
<i>Licensee's Notice and Billing Address:</i>	Pacific Gas and Electric Company 300 Lakeside Drive, Suite 210 Oakland, CA 94612 Attn: Land Right Library
<i>Licensee's Emergency Contact and Address:</i>	Telephone: 1 (800) 660-6789
<i>Licensee's Insurance Contact and Address (not broker):</i>	Telephone: 1 (415) 973-4548
<i>Contact Information for Licensee's Agent for Service of Process:</i>	CSC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
<i>License Area:</i>	<p>Approximately 164 rentable square feet of land, which is a portion of China Basin Park (Assessor Parcel Number 8719A-005), within Mission Rock in the City and County of San Francisco, State of California, as further depicted on <i>Exhibit A</i>, which exhibits are attached hereto and made a part hereof, together with any and all improvements and alterations thereto.</p> <p>The License Area is within a public open space.</p> <p>The above-ground areas of the License Area may not be obstructed, blocked or impeded in any way by Licensee, except in connection with: (1) any Permitted Activities where all required Regulatory Approvals and any other approvals required hereunder have been obtained (including but not limited to maintenance or repair of the Utility Facility), (2) in the case of an emergency in</p>

	accordance with the Additional Conditions to Permitted Activities section, below, or (3) any approved above-grade meters, boxes or appurtenances.
<i>Utility Facility:</i>	The underground portion of an electric power line located within the License Area that provides power to the Pilot House owned by the Port adjacent to Project Site (“Serviced Building”).
<i>Length of Term:</i>	Sixty-six (66) years.
<i>Commencement Date:</i>	[Note: Insert the date the License is fully executed, after all necessary approvals, including Board approval of this License and once the existing agreement between MRP and PG&E has terminated.]
<i>Expiration Date:</i>	_____, 2091 [Note: Insert the date that is 66 years after the Commencement Date].
<i>License Fee:</i>	\$0.00
<i>Security Deposit:</i>	Not applicable
<i>Permitted Activities:</i>	The License Area shall be used solely for the operation, maintenance, repair and replacement of the Utility Facility located within the License Area and for no other purpose, as further described in Section 4 , and subject to the immediately following “ Additional Conditions to Permitted Activities ” row of this Basic License Information.
<i>Additional Conditions to Permitted Activities:</i>	<p>Except in the event of an emergency where no prior written notice to Port is required, Licensee will provide Port at least 30 days’ prior written notice before performing any maintenance or repair of the Utility Facility that requires the License Area be blocked off for more than 4 hours. Licensee’s notice will include the dates, hours, and a description of the work/plans/specifications of the maintenance or repair, including any permits required, that Licensee proposes in the License Area. If Port reasonably objects to any aspect of Licensee’s proposal, then Port will have 15 days to object in writing. Licensee will use its good faith efforts to address Port’s objections, including but not limited to changing the proposed dates/hours to dates/hours that are reasonably acceptable to Port.</p> <p>Licensee agrees to comply with Section 5 regarding Sidewalk Closures of the Regulations for Working in San Francisco Streets (dated December 2022). The regulations may be found at:</p>

	<p>https://www.sfnta.com/reports/construction-regulations-blue-book</p> <p>During the major league baseball season and to the extent reasonably possible, Licensee will conduct planned Permitted Activities on non-home game days of the San Francisco Giants. The foregoing shall in no way limit Licensee's ability to access the License Area to address emergencies.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 4.3, Licensee shall be prohibited from using the License Area for any of the following activities:</p> <p>(a) Parking of any vehicles or placement of any equipment in the License Area, except for temporary equipment and vehicles in connection with the Permitted Activities;</p> <p>(b) Excavating any areas adjacent to or near the License Area that are comprised of lightweight cellular concrete; and</p> <p>(c) Interfering with or damaging the Other Utilities within, around, about or near the License Area.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<i>Cure Period where applicable:</i>	Defined in Section 22.1.
<i>Maintenance and Repair:</i>	Sole responsibility of Licensee—no exceptions
<i>Utilities and Services:</i>	Sole responsibility of Licensee—no exceptions
<i>Lightweight Cellular Concrete:</i>	<p>At Licensee's request, the Horizontal Developer installed the Utility Facility within the License Area in a twenty-four inch (24") wide trench that is approximately between thirty-eight and one-half inches and forty-four and one-half inches (38.5" – 44.5") deep and surrounded the Utility Facility within the License Area in a minimum of twelve inches (12") of sand.</p> <p>So long as Licensee's Permitted Activities are within the License Area, there should be no contact with or excavation of lightweight cellular concrete ("LCC") surrounding the Utility Facility. Other areas within Mission Rock, including areas outside the 24 inches of sand that surround the Utility Facility, rights-of-way within Mission Rock, and China Basin Park are comprised in whole or in part of LCC.</p>

	<p>Working within areas outside the License Area that are comprised in whole or in part of LCC require compliance with additional and/or different Regulatory Approvals and procedures than areas comprised of typical pavement base and asphalt concrete wearing surface applied in other areas of the City. Licensee acknowledges and accepts that the additional and/or different Regulatory Approvals and procedures may result in additional costs to Licensee to repair and backfill any excavated areas.</p> <p>Notwithstanding that Permitted Activities within the License Area should not contact LCC, Licensee must promptly notify Port if its activities under this License result in any contact with or penetration of any LCC, will comply with all such reasonable requirements and procedures regarding LCC, and will be responsible for all costs associated with backfilling and/or repairing any damage resulting from such contact or penetration, as directed by Port or its designee.</p>
<i>Franchise Fee:</i>	Not Applicable
<i>Development Project:</i>	Mission Rock, as further described in <i>Section 1.3.</i>
<i>Prepared By:</i>	Caroline Morris

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NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY NO. XXXXX

THIS NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY (this “**License**”) is dated as of the License Date set forth in the Basic License Information, for reference purposes only, by and between the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), and **PACIFIC GAS AND ELECTRIC COMPANY** (“**PG&E**” or “**Licensee**”), a California corporation. City and Licensee will sometimes hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”. The Basic License Information and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this “**License**.”

RECITALS

A. Port owns the License Area described in the Basic License Information. The License Area is within the area known as Seawall Lot 337, located south of Mission Creek/China Basin Channel in the Mission Bay neighborhood (the “**Project Site**” or “**Mission Rock**”), as more particularly described in that certain Disposition and Development Agreement dated August 15, 2018, by and between Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns, “**Horizontal Developer**”), and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Horizontal DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”).

B. Licensee will operate and maintain the Utility Facility within the License Area which Utility Facility provides power to the Serviced Building. The License Area is owned by the Port. The License Area is generally used as open space, including for pedestrian access paseos that are open to the public at all times.

C. Pursuant to **Port Commission Resolution No. XXXX** adopted on **XXXXXXXX**, the Port Commission authorized the Port Executive Director to execute this License under the terms and conditions provided herein, subject to approval by the Board of Supervisors, which was granted by the Board of Supervisors in **Resolution No. XXXXX on XXXXXXXX**.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, PORT AND LICENSEE HEREBY AGREE AS FOLLOWS:

1. GRANT OF LICENSE.

1.1. License Area. Port hereby grants to Licensee a non-exclusive license to enter upon and use the License Area described in the Basic License Information for the Permitted Activities.

1.2. Other Utilities. Licensee acknowledges and understands that its Utility Facility is near other utility infrastructure and systems (collectively, “**Other Utilities**”), such as infrastructure for the district energy system and the blackwater system. It is Licensee’s sole responsibility to ensure that the Permitted Activities do not adversely impact the Other Utilities, whether pre-existing or later installed pursuant to **Section 10**, below. Licensee is solely responsible for all costs and damages to the Other Utilities from the Permitted Activities.

1.3. Mission Rock Development. Licensee acknowledges that the License Area is within the Mission Rock development site. Accordingly, there will be construction and activities associated with such construction within, adjacent to, and near the License Area throughout the Term which will generate certain adverse impacts that may result in inconvenience to or disturbance of Licensee (provided that physical damage resulting from such construction and associated activities shall be redressed). Impacts may include, but are not limited to,

coordinating date and time of routine maintenance of the Utility Facility with both vertical and horizontal developers, Port tenants, subtenants and other users within the Mission Rock development site, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Licensee hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance, except for failure to redress physical damage resulting from construction and associated activities.

2. CONDITION OF PROPERTY.

2.1. AS IS Condition. Licensee acknowledges that Port has made no representations or warranties concerning the License Area shown, including without limitation, the environmental or seismological condition thereof. Licensee acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials and the FEMA disclosure notice attached as *Schedule 2* and Licensee accepts these areas “AS IS”, “WITH ALL FAULTS.” Licensee shall maintain the License Area and any other areas used in connection with this License so they will not be unsafe, unsightly or unsanitary as a result of the Permitted Activities. Licensee represents and warrants to Port that Licensee has investigated and inspected, either independently or through agents of Licensee’s own choosing, the condition of each of these areas and their suitability for Licensee’s business and intended use. Licensee acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the seismological, physical or environmental condition of these areas, the present or future suitability of these areas for Licensee’s business, or any other matter whatsoever relating to these areas, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

2.2. Accessibility. Licensee is hereby advised that the License Area has not been inspected by a Certified Access Specialist (“CASp”) for accessibility issues. Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards. Licensee understands and agrees that it may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws as a result of Licensee’s Permitted Activities.

3. TAXES AND ASSESSMENTS.

3.1. General. Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into resulting from Licensee’s possession, use, or occupancy of the License Area under this License, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy of the License Area by Licensee under this License (as distinguished from the ownership of the License Area). Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Effective Date. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

3.2. Possessory Interest Tax. Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any sublease or assignment permitted under this License and any exercise of any option to renew or other extension of this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by Law, all of which shall be paid when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the License Area or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Commencement Date. Licensee shall timely provide any information to the Port or City that may reasonably be requested to ensure compliance with this or any other reporting requirement.

4. USE OF THE LICENSE AREA.

4.1. Permitted Activities. Subject to obtaining all required Regulatory Approvals and compliance with the terms and conditions of this License, Licensee may: use the License Area for the sole purpose of operating and maintaining, at Licensee's sole expense and risk, the Utility Facility, including but not limited to the right to excavate, repair, reconstruct, maintain, replace within the License Area, and remove such Utility Facility, for the purpose of providing electric service (collectively, the "**Permitted Activities**"). Any activities other than the Permitted Activities shall require Port's advance written approval, which Port may offer in its sole discretion.

4.2. Non-Interference. Licensee acknowledges and agrees that Licensee's exercise of the rights herein granted shall not impede or interfere with the use of the above-ground portion of License Area by Port and its tenants, subtenants, invitees, and members of the public without the prior written consent of Port or the Other Utilities as further described in **Section 1.2**, provided however that Port acknowledges the restrictions on its approvals and activities set forth in **Section 10(b)** of this License. Licensee shall notify and keep Port and if requested by Port, Port tenants, the master association of Mission Rock, and private property owners, informed of its activities under this License in accordance with the "**Additional Conditions to Permitted Activities**" row of this Basic License Information.

4.3. Prohibited Uses. Licensee shall use the License Area solely for the Permitted Activities and for no other purpose. Any other use in the License Area, including but not limited to the Prohibited Uses identified in the Basic License Information, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property except for the restrictions set forth in **Section 10(b)** of this License, obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) is prohibited (each, a "**Prohibited Use**"). Use of the Utility Facility by any party other than Licensee or its Agents without Port's prior written consent pursuant to **Section 20.4**, is a Prohibited Use. For the avoidance of doubt, an Assignee approved in accordance with this License may use the Utility Facility.

In the event after inspection of the License Area by the Port that a Prohibited Use is occurring on the License Area, then Licensee shall immediately cease the Prohibited Use and shall pay to Port, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00),

subject to increases set forth below, upon delivery of written notice to Licensee to cease the Prohibited Use (“**Notice to Cease Prohibited Use**”) within thirty (30) calendar days after delivery of written notice. In subsequent inspection(s) of the License Area if Licensee has not ceased the prior-cited Prohibited Use within thirty (30) calendar days, then Licensee shall pay to Port, as an additional charge, an amount equaling Four Hundred Dollars (\$400.00), subject to increases set forth below, for each additional thirty (30) calendar day Notice to Cease Prohibited Use delivered to Licensee. The Parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the License Area. Licensee’s failure to comply with the applicable Notice to Cease Prohibited Use and Port’s right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity. The amounts set forth in this Section shall be due within sixty (60) calendar days following delivery of the applicable Notice to Cease Prohibited Use.

Each charge set forth in this Section and in **Sections 8.3** (Additional Charges) shall be increased by one hundred dollars (\$100.00) on every tenth (10th) Anniversary Date after the Effective Date. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

5. EFFECTIVE DATE.

This License shall become effective on the first date (the “**Effective Date**”) that all of the following conditions are satisfied:

- (a) The Port Commission authorizes execution of this License by the Port Executive Director;
- (b) The Board of Supervisors, authorizes execution of this License; and
- (c) The Parties fully execute this License.

6. TERM OF LICENSE.

This License shall be for a term (“**Term**”) commencing on the Effective Date and expiring on the day that is sixty-six (66) years from and after the Effective Date (the “**Expiration Date**”). The License shall be irrevocable during the Term unless terminated, in whole or in part, in accordance with either of the following: (a) provided all the terms and conditions of Section 7 below are satisfied by Licensee, Licensee delivers written notice to Port of its relinquishment and termination of any or all of the rights granted hereunder; or (b) upon an Event of Default as described in Section 21 below.

7. INTENTIONALLY DELETED.

8. FEES.

8.1. General. All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to Port and delivered to Port’s address specified in **Section 24**, or such other place as Port may designate in writing.

8.2. License Fee.

(a) **During the Term.** If the Port Commission and the Board of Supervisors approve, there will be no license fee charged to Licensee for use of the License Area during the Term.

(b) **After the Term.** Upon the expiration of this License, Licensee and Port shall meet and confer to any monthly license fee for Licensee’s continued use and/or occupancy of the License Area.

8.3. Additional Charges. Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate Party, upon written notice from the Port, the items identified in 16.4(a) (Licensee's Environmental Condition Notification Requirements); 16.5 (Storm Water Pollution Prevention); 34.1 (Non-Discrimination); and 37 (Estoppel Certificate); or to provide evidence of the required insurance coverage described in Section 21, then upon written notice from Port of such failure, Licensee shall pay, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00), as increased subject to Section 4.3. In the event Licensee fails to provide the necessary document within thirty (30) calendar days after delivery of such written notice and Port delivers to Licensee an additional written notice requesting such document, then Licensee shall pay to Port, as an additional charge, an amount equaling Three Hundred Fifty Dollars (\$350.00), as increased subject to Section 4.3 for each additional thirty (30) calendar days written notice Port delivers to Licensee requesting such document. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. The amounts set forth in this Section shall be due within thirty (30) business days following delivery of the written notice of such failure to submit the documents identified herein. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

8.4. Returned Checks. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission).

9. INTENTIONALLY DELETED.

10. SUBJECT TO OTHER USES.

Licensee acknowledges and agrees that this License herein granted is for Licensee's non-exclusive use and that Port shall have the right to use or permit the use by others of the License Area for any use that does not substantially interfere with the rights granted to Licensee herein, provided that,

(a) Notwithstanding the generality of the foregoing, Licensee acknowledges its obligations in **Sections 1.2 and 4.2.**

(b) Subject to the last sentence of this paragraph, Port shall obtain Licensee's prior written consent, which consent shall be at Licensee's reasonable discretion, and which shall not be unreasonably withheld, conditioned or delayed if Port wishes to issue a license, lease or other written agreement to another party for any subsurface uses within the License Area. Notwithstanding the foregoing, the Port shall not place or construct, nor issue permits for a third party to place or construct, any building or other structure, or store flammable substances, or other non-movable obstruction, or substantially add to or diminish the ground level within the License Area; provided however, the Port may issue permits and/or allow movable street furniture such as tables and chairs in the License Area. The Port will reasonably assist Licensee to require the removal or relocation of any unauthorized uses under this Section.

(i) If Licensee's prior approval is required under **Section 10(b)**, Port shall provide sufficient documentation, including engineering drawings to enable Licensee to review any such proposed activities. Licensee shall consent or deny consent within ninety (90) days of a Port request presented to Licensee with sufficient documentation under **Section 10(b)**. Licensee's failure to respond within the 90-day period, after at least two (2) written requests from Port under Licensee's address listed in **Section 24** (Notice) highlighting the issue and 90-day deadline and reasonable further efforts by the Port to communicate the issue to PG&E

through established channels of communication between the Parties, shall be deemed an approval of Port's request. If Licensee denies the request, the denial must be accompanied by an explanation of the technical rationale for the denial in sufficient detail to allow Port to submit a redesign of the requested project such that Licensee would consent.

(ii) If Licensee denies consent, Port may seek CPUC approval to allow the activity or to allow the proposed facilities to be co-located in the License Area, which approval would supersede Licensee's denial.

11. INTENTIONALLY DELETED.

12. REPAIR AND MAINTENANCE.

Licensee, at its sole cost and expense and in no later than thirty (30) days (unless Licensee requests and Port provides written approval authorizing one or more additional thirty-day periods), (a) shall repair and maintain the Utility Facility and the License Area as necessary to prevent threats to health, safety or the environment and may make other repairs all in compliance with all applicable Laws; and (b) in the event that Licensee digs, excavates, or otherwise damages any portion of the License Area or surrounding area as a result of the Permitted Activities Licensee shall restore said portion of the License Area (including any surrounding area damaged or affected by such action) as nearly as reasonably possible to its condition prior to such action, including without limiting the generality of the foregoing, pavement (including any special or unique pavement unless Port requests in writing, in each instance, that Licensee restore the pavement with standard asphalt covering), sidewalks, lawns and shrubs, and any other improvements owned by the Port or City, and as may be required by Regulatory Approvals. So long as Licensee's Permitted Activities are totally within the License Area, there should be no contact with or excavation of lightweight cellular concrete ("LCC") surrounding the Utility Facility. Other areas within Mission Rock, including areas outside the 24 inches of sand that surround the Utility Facility, rights-of-way within Mission Rock, and China Basin Park are comprised in whole or in part of LCC. If Licensee's repair and maintenance Permitted Activities are within areas comprised in whole or in part of LCC, Licensee must comply with the obligations described in the "*Lightweight Cellular Concrete*" row of the Basic License Information.

Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. Licensee acknowledges and agrees that, except in the case of an emergency, without limiting the conditions set forth in the "*Additional Conditions to Permitted Activities*" row of the Basic License Information, Licensee shall use commercially reasonable efforts to provide advance written notice, and shall obtain all Regulatory Approvals (along with full payment of all fees and charges associated with obtaining the same), and shall coordinate with Port (and at Port's request, the Master Association for the Mission Rock development or such other Port designee) prior to performing any repair or maintenance of the Utility Facility permitted under this License.

13. SURRENDER; EQUIPMENT REMOVAL PLAN.

(a) No later than twenty-four months after the expiration or notice of earlier termination of this License (and subject to the fee provisions in *Section 10.2(b)* of this License), Licensee shall surrender the License Area clean, free of debris, waste, and Hazardous Materials caused or permitted by Licensee or the Permitted Activities, and free and clear of all liens and encumbrances created by or benefitting Licensee. Licensee shall abandon in place the Utility Facility unless either Port, in accordance with *Section 14*, or Licensee reasonably determine that the Utility Facility shall be removed. If determined the Utility Facility is to be removed, it shall be in accordance with the methods and schedules of an "*Equipment Removal Plan*" developed and paid for by Licensee as that plan is approved by Port.

(b) Licensee shall submit a final Equipment Removal Plan to Port and to all Regulatory Agencies for Regulatory Approvals within ninety (90) days prior to the expiration of this License, or no later than twenty-four months following notice of earlier termination of this License. The plan must contain the following:

(i) A detailed description of the methods to be employed to remove the Utility Facility including their ultimate disposition;

(ii) Supplemental environmental information if required or necessary, to enable Port to comply with applicable Laws;

(iii) A schedule for completion of the removal of the Utility Facility;
and

(iv) Identification of the entities to be employed to execute the Equipment Removal Plan.

(c) If the Utility Facility is abandoned in place, Licensee shall deliver to Port such documentation as may be necessary to convey title to such remaining improvements to Port free and clear of any liens, mortgages, loans or other encumbrances.

(d) Should Licensee fail to remove the Utility Facility or convey title to any remaining improvements pursuant to the requirements of this Section, Licensee agrees it will be deemed abandoned. Licensee hereby waives the benefits of California Civil Code Section 1993, to the extent applicable.

(e) If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

(f) Licensee's obligation under this Section shall survive the expiration or earlier termination of this License until the abandonment, transfer, or removal of the Utility Facility in accordance with this License.

14. REQUIRED REMOVAL OR RELOCATION OF THE UTILITY FACILITY.

14.1. *Required Removal or Relocation.* Licensee agrees that it will remove or relocate without expense to Port or City any Utility Facility installed, used and maintained under this License, if and when such removal or relocation is made necessary by any lawful change of grade, alignment or width of any street or right of way, or by any work to be performed under the governmental authority of Port or the City and upon written notice of the same by Port or City. After receipt of a notice requesting relocation/removal of the Utility Facility, Licensee and the Port/City will use commercially reasonable and technically feasible efforts to facilitate the Port's/City's design and engineering of any Port or City project requiring such removal or relocation to minimize time and expense to both Parties. The Parties will negotiate in good faith to amend this License to the extent necessary to reflect the new License Area.

In the event that: (a) applicable law prohibits the removal or relocation of the Utility Facility; or (b) the required relocation would render the Utility Facility permanently unusable and thereby defeat the purpose of this License or; (c) despite Licensee's good faith efforts, a Regulatory Agency having jurisdiction over the Utility Facility prohibits Licensee from removing or relocating the Utility Facility; or (d) the Port or City can reasonably redesign or reroute such work at significantly less cost than the cost to Licensee to relocate or remove the Utility Facility, Port and Licensee agree to negotiate in good faith to allow for the Port or City to proceed in an alternative manner acceptable to all Parties, as evidenced in writing signed by Licensee and Port or City, as applicable, conditioned on Licensee bearing all commercially reasonable costs of the City/Port alternative.

Licensee shall remove or relocate the Utility Facility, pursuant to an Equipment Removal Plan as described in Section 13, within thirty-six (36) months subject to Force Majeure and reasonable extensions by Port or City after notice has been given under this Section.

To the extent that all or any portion of the License Area is surrendered as a result of a removal or relocation of the Utility Facility as provided by this Section, Licensee shall comply with the provisions Section 13.

14.2. Force Majeure Delay. The dates and times by which Licensee must perform the obligations described in this Section 14 will be extended by Force Majeure. To obtain the benefit of an extension of time due to Force Majeure (in each instance, a “**Force Majeure Delay**”), Licensee must give Port and City written notice within sixty (60) days after the earlier of the Force Majeure event or Licensee’s discovery of the Force Majeure event causing the delay to occur (“**Force Majeure Notice**”) of: (i) the cause of the delay; (ii) Licensee’s reasonable estimate of the length of the Force Majeure Delay. Unless the City or Port objects to Licensee’s estimate of the period of Force Majeure Delay within fifteen (15) business days after timely receipt of a Force Majeure Notice (or within fifteen (15) business days after Port’s receipt of a second Force Majeure Notice if Port did not respond to the first Force Majeure Notice), the Force Majeure Delay will be the period specified in the applicable Force Majeure Notice. Each Force Majeure Notice must display prominently on the envelope enclosing such notice and the first page of such notice a statement substantially the following form (including emphasis): “**FORCE MAJEURE DELAY NOTICE. IMMEDIATE ATTENTION REQUIRED. FAILURE TO RESPOND WITHIN FIFTEEN (15) BUSINESS DAYS MAY RESULT IN A FORCE MAJEURE DELAY AS DESCRIBED IN THIS NOTICE.**”

15. COMPLIANCE WITH LAWS; PORT ACTING AS REAL PROPERTY OWNER.

15.1. Compliance with Laws. All activities performed on the License Area by Licensee its Agents shall be done in accordance with all then applicable Laws.

15.2. Proprietary Capacity. Licensee understands and agrees that Port is entering into this License in its capacity as a property owner with a proprietary interest. Except as specifically stated herein, Licensee further understands and agrees that no approval by Port for purposes of this License shall be deemed to constitute any approval required by any federal, state, regional or City authority. Before beginning any work in the License Area, Licensee shall obtain any and all necessary permits and other Regulatory Approvals for conducting the Permitted Activities and shall maintain such approvals as necessary throughout the Term of this License. Promptly upon receipt of such approvals, Licensee shall use commercially reasonable efforts to deliver copies to Port, and in any case upon request by the Port. Port shall cooperate with Licensee, at no cost to Port, to the extent necessary to obtain applicable approvals. To the fullest extent permitted by Law, Licensee agrees to indemnify and hold the Indemnified Parties harmless from and against any loss, expense, cost, damage, attorneys’ fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee’s failure to obtain or comply with the terms and conditions of any Regulatory Approval. The indemnity obligation in this paragraph shall survive the expiration or termination of this License.

15.3. Regulatory Approval. Licensee understands that Licensee’s activity on the License Area may require Regulatory Approval(s). Licensee shall be solely responsible for obtaining any such Regulatory Approval. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by Port or would create obligations on the part of Port or owners of the Other Utilities (whether on or off of the License

Area), other than those expressly acknowledged in Section 10(b) of this License, to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

Without limiting the terms and conditions of this Section, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any governmental officials, departments, boards, commissions or agencies responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a regulatory agency of the City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activities on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

16. HAZARDOUS MATERIALS.

16.1. *Compliance with Environmental Laws.* Licensee will comply and cause its Agents and Invitees, while in, on, or under the License Area, to comply with all Environmental Laws, Operations Plans (if any), the Soil Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices disclosed to Licensee, and any additional soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Utility Facility or the License Area. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed, conditioned or withheld, Handle, nor permit the Handling of, Hazardous Materials in, on, or under the License Area, except for (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, and (b) those Hazardous Materials reasonably necessary to operate and maintain the Utility Facility, and (c) pre-existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

16.2. *Licensee Responsibility.* Licensee agrees to protect its Agents and the general public in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during the Term:

(a) Other than the Hazardous Materials existing prior to the Effective Date in the License Area, will not permit any Hazardous Materials to be present in, on, or under the License Area except as permitted under Section 16.1 and to the extent reasonably necessary for Licensee's operation and maintenance of the Utility Facility;

(b) Will not cause or permit any Hazardous Material Condition;

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or willfully or

knowingly permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Upon and after the Commencement Date, Licensee will be the “**Generator**” of any waste, including hazardous waste, resulting from Licensee’s Permitted Activities (other than to the extent the Horizontal Developer, Phase 1 Horizontal Developer or another vertical developer within Mission Rock is designated as the “Generator” and such designation is approved in writing by the Port’s Deputy Director of Planning and Environment); provided that the Port hereby approves Horizontal Developer and/or Phase 1 Horizontal Developer as the “Generator” of any waste resulting from such entity’s work on the License Area in connection with the first phase of the Mission Rock development; and

(e) Will comply with all provisions of the Soil Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually.

16.3. Removal/Remedial Action of Hazardous Materials.

(a) Nothing in this Section 16.3 shall limit the parties’ rights and obligations under Section 13 (Surrender/Equipment Removal Plan).

(b) After notifying Port in accordance with Section 16.4, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition caused or permitted by Licensee during the Term; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition, and will then provide such notice to Port in accordance with Section 16.4. Except as provided in the previous sentence, Licensee must obtain Port’s approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port’s approval of the work plan and continue diligently until Remediation is complete.

(c) In addition to its obligations under Section 16.3(b), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License any Hazardous Material Condition caused by Licensee’s or its Agents’ or Invitees’ Handling, Release or Exacerbation of Hazardous Materials during the Term.

(d) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port’s reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(e) Unless Licensee or its Subtenants or Agents or Invitees Exacerbate the Hazardous Material Condition or Release Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date.

16.4. Licensee’s Environmental Condition Notification Requirements. The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, (ii) the Soil Management Plan, and (iii) Environmental Laws:

(a) Licensee shall notify Port upon the issuance of any environmental permit, approval or license issued by a Regulatory Agency related to Licensee’s activities on the License Area and shall provide Port with a copy of such documents as requested from Port from time to time, and shall provide to Port any hazardous waste generator identification numbers related to

the License Area issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency, to itself, its sublicensees or Agents.

(b) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 16.1, Handled, in, on, over or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environment condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use during the Term if such Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release (or Handling of Hazardous Materials, except in accordance with Section 16.1) within twenty-four (24) hours following such Release (or Handling).

(c) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

(i) Any notice of the Release of Hazardous Materials (or Handling of Hazardous Materials, except in accordance with Section 16.1), in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area during the Term, or from any vehicles Licensee, or its Agents and Invitees use during the Term that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over or under the License Area during the Term or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use in, on, or under the License Area during the Term;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(d) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(e) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 16.4 upon Port's request.

(f) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area.

(g) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

16.5. Storm Water Pollution Prevention.

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting, if applicable. If requested by the Port, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning on-site operations, if applicable.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction storm water control provisions of the Statewide General Permit for Discharge of Storm Water from Small Municipalities and the San Francisco Storm Water Design Guidelines, subject to review and permitting by the Port.

16.6. Disclosure of Hazardous Materials. Licensee is hereby advised that Hazardous Materials may be present on the License Area, including elevated concentrations of petroleum hydrocarbons, polynuclear aromatic hydrocarbons, heavy metals, and other contaminants commonly found in public rights-of-way, fill and in Bay sediments as further described in the reports listed in *Schedule 1* attached hereto. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Licensee agrees to provide this information to its sublicensees, Agents, Contractors and Invitees in connection with their use of the License Area.

16.7. Failure to Comply. Failure to comply with this Section 16 shall constitute an Event of Default under Section 22.1(a) of this License. In the event of such default, Port shall have all rights available under this License and at law or equity including, without limitation, the right to continue this License and require Licensee to clean up such Hazardous Condition required of Licensee under this Section 16. If Licensee fails to clean up such Hazardous Condition required of Licensee, the Port may terminate this License and collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from Licensee's failure to cleanup of any Hazardous Condition required of Licensee under this Section 16.

16.8. Survival. Licensee's obligations under this Section 16 shall survive the expiration or earlier termination of this License.

17. NO COSTS TO PORT.

Licensee shall bear all costs or expenses of any kind or nature in connection with this License, including but not limited to, all costs of excavation, construction, operation, sampling, monitoring, testing, transporting and disposing of soil or groundwater and backfilling, and shall keep the License Area free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with the Permitted Activities.

18. REPAIR OF DAMAGE.

If any portion of the License Area, or any other property of Port or its Agents located on or about the License Area, is damaged by any of the Permitted Activities conducted by Licensee or its Agents, Licensee shall, at its own cost and expense, repair any and all such damage and restore said property to as nearly as reasonably possible, the condition that existed prior to such damage. If the damage does not create or result in an Emergency Condition (as defined in Section 22), then such repair and restoration shall be completed within a reasonable period but not longer than the time frame specified in Section 22 below.

19. INDEMNIFICATION.

19.1. General Indemnity. Subject to *Section 19.4*, Licensee agrees to and will Indemnify the City and Port from and against any and all Losses imposed upon or incurred by or asserted against the City and Port in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof caused by Licensee or its Agents, or that result from Licensee's Permitted Activities, and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee or its Agents, to the extent resulting from Licensee's use of the License Area under this License;

(b) any use, possession, or occupation of the License Area, and any operation, maintenance, or management of Licensee's Utility Facility in, or condition of the License Area or any part thereof related to the Permitted Activities;

(c) any latent, design, construction or structural defect relating to the Utility Facility, any other subsequent construction, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents related to the Permitted Activities;

(d) any failure on the part of Licensee or its Agents, as applicable, to perform or comply with any of the terms, covenants, or conditions of this License or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents; and

(f) any negligent acts or omissions of Licensee, or its Agents with respect to the Utility Facility, or in, on, under, or about the License Area.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under *Section 19.1* and subject to *Section 19.4*, Licensee agrees to Indemnify the City and Port from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition that occurred or was Exacerbated during the term of this License caused by any acts or omissions of Licensee or its Agents in, on, under, about, or to the License Area;

(ii) any Handling or Release of Hazardous Materials caused by Licensee or its Agents in, on, under, around or about the License Area during the term of this License as a result of the Permitted Activities;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the License Area during the term of this License caused by Licensee or its Agents as a result of the Permitted Activities;

(iv) failure by Licensee to comply with Environmental Laws applicable to the License Area; or

(v) claims by Licensee for exposure to Hazardous Materials in, on, under, around, or about the License Area arising during the Term.

(b) Losses under *Section 19.2(a)* includes:

(i) for the following costs in subsection (x) and (y) incurred in connection with any Investigation or Remediation required by any Environmental Regulatory Agency or in the restoration of the affected area to its condition before the Release, (x) the actual reasonable costs incurred if such costs are incurred before Port tenders the Claim to Licensee, and (y) the actual reasonable costs incurred if such costs are incurred after Port tenders the Claim to Licensee;

(ii) actual damages for diminution in the value of the License Area;

(iii) sums actually paid in settlement of claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties as a result of the Permitted Activities; and

(iv) reasonable attorneys' fees and costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this *Section 19.2* due to Licensee's failure to comply with its Indemnification obligations to Port and the City under this License, Licensee must reimburse Port for Port's actual and reasonable costs within forty-five (45) days after notice from Port.

(c) Licensee understands and agrees that its liability to the City and Port under this *Section 19.2*, subject to *Section 19.4*, arises upon the earlier to occur of:

(i) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area as a result of either the Permitted Activities or the acts or omissions of Licensee or its Agents; and

(ii) the Exacerbation of any Hazardous Material Condition caused by Licensee or its Agents, or resulting from the Permitted Activities; or

(iii) the institution of any Hazardous Materials Claim with respect to such Release of Hazardous Materials or Exacerbation of Hazardous Material Condition resulting from the Permitted Activities or the acts or omissions of Licensee or its Agents, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in *Section 19.4*, Licensee's Indemnification obligations under this License are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City and Port. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the City and Port from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this License are in addition to, and in no

way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this License, at common law or otherwise.

19.4. Exclusions from Indemnification. Nothing in this Indemnity relieves the City or Port from liability, nor will the Indemnities set forth in *Sections 19.1 and 19.2*, or the defense obligations set forth in *Section 19.3* extend to Losses:

(a) to the extent caused by the gross negligence or willful misconduct of the City or Port; or

(b) from third parties' claims for exposure to, or Release or Handling of, Hazardous Materials or a Hazardous Material Condition in, on or under any portion of the License Area prior to the Effective Date of this License, or that are not a result of Licensee's or its Agents' acts or omissions, the Utility Facility, or the Permitted Activities.

19.5. Survival. Licensee's Indemnification obligations for Losses that arise during the term of this License shall survive the expiration or earlier termination of this License.

20. ASSIGNMENT; USE BY OTHERS.

20.1. Assignment; Port Consent Required. This License is personal to Licensee and shall not be assigned, except with the written consent by Port, which shall not be unreasonably withheld; provided, however, that Licensee shall have the right, with notice delivered at least sixty (60) days prior to the assignment, to assign Licensee's interest in this License to an Affiliate of PG&E (a "**Permitted Assignee**") without the prior written consent of Port so long as the Permitted Assignee assumes all of Licensee's obligations under this License.

20.2. Request for Assignment. Except in connection with an assignment to a Permitted Assignee, Licensee shall give Port at least one hundred twenty (120) days prior written notice of any desired assignment (herein "**Notice of Request to Assign**") and shall provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed assignee, (b) the current balance sheet and profit and loss statements (herein "**financial statements**") for the proposed assignee and for any other entity or person who is to be liable for Licensee's obligations under this License, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the assignment (or for such shorter period as the proposed assignee or other person may have been in existence), (c) a full description of the terms and conditions of the proposed assignment, including copies of any and all proposed assignment agreements or other documents and instruments concerning the proposed assignment, (d) a Pre-screening and Leasing Application, or other similar document, completed by the proposed assignee and delivered to Port, and (e) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed assignment and the prospective assignee. Licensee's Notice of Request to Assign shall not be deemed to have been served or given until such time as Licensee has provided Port with all information set forth hereinabove. Licensee shall immediately notify Port of any modifications to the proposed terms of the assignment.

If Port consents to the Assignment, Licensee must close the Assignment on the terms stated in the Notice of Request to Assign within one hundred twenty (120) days after Port notifies Licensee of Port's consent. If the assignment agreement does not close within the 120-day period, then Port's consent will expire, unless Licensee gives Port a new Notice of Request to Assign, in which case Port again will be entitled to exercise any of the options under this Section.

20.3. Required Provisions in Every Assignment. Each and every assignment agreement shall contain the following provisions:

(a) Each assignee shall assume all obligations of Licensee under this License and shall be jointly and severally liable with Licensee for payment of all Fees and performance of all terms, covenants and conditions to be performed by Licensee hereunder.

(b) A clause naming as additional insureds under all liability and other insurance policies “**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS EMPLOYEES AND REPRESENTATIVES**”.

20.4. Use by Others Prohibited. Except for an assignment permitted in accordance with Sections 20.1 and 20.2, Licensee is prohibited from allowing other parties use of the Utility Facility.

20.5. No Further Consent Implied. A consent to one Assignment shall not be construed as a consent to a subsequent assignment. Except as set forth in Section 20.1 above, no interest in this License shall be assignable as to Licensee’s interest by operation of Law without Port’s written consent.

20.6. Fees for Review. Licensee shall reimburse Port for all reasonable and actual costs, including without limitation, reasonable attorneys’ fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment, including any assignment to a Permitted Assignee.

20.7. No Release of Licensee. The acceptance by Port of Fees or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this License or to be a consent to any assignment, or to be a release of Licensee from any obligation under this License. No assignment of this License shall in any way diminish, impair or release any of the liabilities and obligations of Licensee unless expressly agreed by Port.

20.8. Failure to Comply. Any assignment that does not comply with this Section fully may constitute an Event of Default under Section 22.1(b) and will be void as to Port and this License.

20.9. Acknowledgement. Licensee acknowledges and agrees that each of the rights of Port set forth in Section 20 is a reasonable limitation on Licensee’s right to assign or sublet for purposes of California Civil Code Section 1951.4.

20.10. Waiver of Liability. The Indemnified Parties shall not be liable for any damage to the property of Licensee or its Agents, or for any bodily injury or death to any such Agent, resulting or arising from the condition of the License Area or its use by Licensee or for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, with the exception of damage or injury caused by the gross negligence, willful or intentional misconduct of the Indemnified Parties. Under no circumstances shall any of the Indemnified Parties be liable under any circumstances for any consequential, incidental or punitive damages.

21. INSURANCE.

21.1. Required Insurance. Except as limited in Section 21.1(e), during the Term, Licensee shall maintain in full force and effect, at its own cost and expense at all times while Permitted Activities are being conducted, insurance in the amounts and coverages set forth below. Licensee shall have the right to self-insure with respect to any of the insurance requirements required of Licensee under this License. In the event that Licensee elects to self-insure, on or before the Effective Date and thirty (30) days in advance of each Anniversary Date or the date Licensee intends to begin self-insurance for any coverage, Licensee shall submit a letter statement of self-insurance satisfactory to the Port signed by a duly authorized

representative of Licensee, such letter evidencing that Licensee's self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this License.

(a) Workers' Compensation, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance as required by Law, with Employers' Liability limits not less than One Million Dollars (\$1,000,000.00) for each accident. In the event Licensee is self-insured for the insurance required pursuant to this Section 21.1(a), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(b) Comprehensive General Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and Ten Million Dollars (\$10,000,000.00) General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting from any drilling or excavation conducted as part of the Permitted Activities. However, this provision shall not apply to claims relating to investigation or remediation of any environmental conditions on the License Area.

(c) Comprehensive Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

(d) Pollution Legal Liability Insurance with combined single limit of Five Million Dollars (\$5,000,000.00) each claim, Ten Million Dollars (\$10,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(e) Construction Activities. At all times during any period during which Licensee performs maintenance, repair, removal or relocation of the Utility Facility within the License Area, Licensee shall require its contractors that perform any services on or about the License Area to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. If Licensee has engaged Agents to work on or about the License Area other than Licensee's contractors, Licensee shall cause such Agents to carry insurance that is consistent with industry custom and practice for work of similar nature and scope.

(i) Licensee shall carry "All Risk Property Insurance," which includes coverage during construction, testing, and start-up for any and all materials, equipment and machinery intended for the Project while at the site, off-site and during transit to the site.

(ii) Licensee shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Licensee in connection with Permitted Activities within the License Area for any

improvements or any alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Licensee therefor.

21.2. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Licensee hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the “**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS,**” shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

(c) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(d) Licensee shall deliver to Port certificates of insurance (if policies are obtained), letters of self-insurance (if Licensee elects to self-insure) in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking system such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Licensee's broker shall complete the insurance questionnaire and submit all required documentation. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) So long as PG&E has not assigned this License (including to an Affiliate of PG&E), then not more often than every five (5) years and upon not less than sixty (60) days prior written notice, Port may require Licensee to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be reasonably required by Law, the City's Risk Manager or as is generally required by commercial owners of facilities similar in size, character, age and location as the Utility Facility with respect to risks comparable to those associated with the use of the License Area. Port expressly reserves the right to annually require Licensee to increase insurance limits or provide other coverage or coverage amounts upon assignment or transfer of this License.

(f) If at any time during the Term, Licensee or its Agents, as the case may be, fail to maintain the required insurance in full force and effect, all work under this License shall be discontinued immediately, and shall not resume until notice is received by Port that the required insurance has been renewed to full force and effect for a period satisfactory to Port.

(g) **Claims Made Policy.** Should any of the insurance that Licensee is required to hold under this License be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

(h) **Annual Aggregate Limit.** Should any of the insurance that Licensee is required to hold under this License be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

(i) **Waiver of Subrogation Rights.** Notwithstanding anything to the contrary contained herein, Port and Licensee (each a “**Waiving Party**”) each hereby waives any right of recovery against the other Party for any loss or damage sustained by such other Party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this License or is actually covered by insurance obtained by the Waiving Party.

22. DEFAULT; REMEDIES; EMERGENCY CONDITION.

22.1. Default. The occurrence of either of the following constitutes an “**Event of Default:**” Licensee fails to cure any violation of a term, covenant, or condition of this License within thirty (30) calendar days after written notice of violation from Port, or if it reasonably would require more than thirty (30) calendar days to remedy such default, then within a time reasonably necessary to remedy such default so long as Licensee has commenced actions to cure such default within the thirty (30) calendar day period and diligently pursues its efforts to cure to completion. Any such notice of violation shall specify the nature of the default. If the default has been remedied to the reasonable satisfaction of Port during this time, Port shall not terminate this License based upon such default. For purposes of this provision, written notice of violation shall be deemed sufficiently given if sent to the applicable Party at address set forth in **Section 24**. Nothing in this Section shall be interpreted to limit Port’s rights under **Section 23**.

22.2. Remedies. Upon an Event of Default by Licensee and following the applicable cure period set forth in Section 22.1 above, Port may, in its sole discretion, in addition to any other remedy Port may have at law or in equity, elect to terminate this License and Licensee’s right to use the License Area. Upon any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and surrender the License Area in accordance with Section 13 above and Port may take any and all action to enforce Licensee’s obligations.

22.3. Emergency Condition.

(a) In the Event of an Emergency Condition, Licensee must take all necessary immediate actions to the extent practicable to address the Emergency Condition, and then provide such notice to Port in accordance with Section 16.4.

(b) In the event Port notifies Licensee of an Emergency Condition, Licensee must immediately take all reasonably practicable actions to address the Emergency Condition, including but not limited actions to confine or limit the extent or impact of the Emergency Condition, and must notify the Port of the status of the Emergency Condition and all reasonably practicable actions to address it within twenty-four hours of Port’s notice.

(c) An “**Emergency Condition**” means an event or circumstance that in the reasonable opinion of the Port requires immediate action for the protection of the health or safety of any person or the prevention of substantial property damage.

(d) Failure to comply with this Section 22.3 shall constitute an Event of Default under Section 22.1 of this License. In addition, upon failure to comply with this Section the Port may require Licensee to suspend operation of the Utility Facility and/or cease Licensee’s activities on the License Area until such Emergency Condition has been remedied to the reasonable satisfaction of Port.

23. PORT'S ENTRY ON LICENSE AREA.

Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; and, except as provided in Section 10(b) of this License, to perform any necessary maintenance, repairs or restoration to the License Area. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area, provided no excavation shall occur unless Port notifies Underground Service Alert (USA) and opens an emergency ticket prior to any excavation and Licensee may have an inspector present during such excavation provided that Port shall have no obligation to modify its schedule or planned operations in case of emergency. Port shall comply with Licensee's reasonable standards when working near the Utility Facility. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages that result from inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area for the purposes described in this Section (except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees), or entry by the public onto the License Area.

24. NOTICES.

Any notice given under this License shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

Licensee: Pacific Gas and Electric Company
Land Management
300 Lakeside Drive, Suite 210
Oakland, CA 94612
Attn: Land Rights Library

With a copy to: Pacific Gas and Electric Company
Law Department
P.O. Box 1018
Oakland, CA 94612-9991
Attn: Managing Counsel,
Law Regulatory

Port: Port of San Francisco
Pier 1
San Francisco, California 94111
Attention: Director of Real Estate and Development

Telephone: (415) 274-0400

With a copy to: Port of San Francisco
Pier 1
San Francisco, California 94111
Attention: General Counsel

Telephone: (415) 274-0400

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this License shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

25. RECORDATION.

Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

26. EXCLUSIVE BENEFIT.

The provisions of this License are for the exclusive benefit of City and Port and its successors and assigns and Licensee and shall not be deemed to be for the benefit of or confer rights upon any other person except as provided herein. Nothing herein shall be deemed a dedication of any portion of the License Area to or for the benefit of the general public.

27. SIGNS.

Except for any signs that may be required by Laws relating to the operation of the Utility Facility, Licensee shall not have the right to place, construct or maintain any sign, advertisement, awning, banner or other exterior decoration in the License Area without Port's prior written consent which consent may be granted or withheld in Port's sole discretion. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, and Licensee shall obtain all Regulatory Approvals required by Laws.

28. HOLDING OVER.

Any holding over after the expiration of the Term with the prior written consent of Port shall not constitute a renewal hereof, but shall be deemed a month-to-month license and shall be upon each and every one of the terms, conditions and covenants of this License, except that Port and Licensee shall meet and confer as to any monthly License Fee. Either Party may cancel said month-to-month license upon thirty (30) days written notice to the other Party.

29. MISCELLANEOUS.

This License may be amended or modified only by a written amendment signed by each of the Parties hereto. No waiver by a Party of any of the provisions of this License shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. This License may be executed in one or more originals or counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. Time is of the essence as to each and every provision of this License. This License shall be construed and interpreted in accordance with the laws of the State of California and the City's Charter. This License contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in

interpreting this License. This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

30. WAIVER OF CLAIMS.

Licensee hereby waives on behalf of itself and its heirs, successors, and assigns, any and all rights which it may have to file a claim or bring an action of any kind or character against the City, Port, or their respective officers, agents, or employees, for damage to property or personal injury, including death, which might arise out of the use of the License Area under this License, except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees.

31. ATTORNEYS' FEES.

If any Party hereto brings an action or proceeding (including any cross complaint or counterclaim) against any other Party by reason of a default, or otherwise arising out of this License, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this section shall include, without limitation, a Party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other Party of its claim or defense. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this License, reasonable fees of attorneys of Licensees' in-house Law Department and the City Attorney's Office shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by Licensee's in-house Law Department or the City Attorney's Office, respectively.

32. AUTHORITY.

If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of such Licensee does hereby covenant and warrant that such Licensee is a duly authorized and existing entity, that such Licensee has and is qualified to do business in California, that such Licensee has full right and authority to execute this License and that each and all of the persons signing on behalf of such Licensee is authorized to do so. Upon Port's request, a Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

33. MINERAL RESERVATION.

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Rent or otherwise relieve Licensee from any of its obligations under this License.

34. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this Section 34 relating to any applicable code provision shall be deemed an Event of Default under Section 22.1 of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

34.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code) and shall require all Sublicensees and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively “**Core Benefits**”) as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

(d) **CMD Form.** On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) **Penalties.** Licensee understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

34.2. Requiring Health Benefits for Covered Employees. Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 121.3(d) of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a “small business” by the City pursuant to Section 121.3 of the HCAO, it shall have no obligation to comply with Section 34.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Licensee shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Licensee based on the Sublicensee’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that

fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

34.3. *First Source Hiring.* The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply, to the extent applicable to Licensee, with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this License.

34.4. *Local Business Enterprises.* The Port Commission encourages the participation of local business enterprises (LBEs) in Licensee's operations. Licensee agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

34.5. *Indoor Air Quality.* Licensee agrees if applicable to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

34.6. *Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.* Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

34.7. *Prohibition of Alcoholic Beverages Advertising.* Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

34.8. *[Reserved.]*

34.9. *Restrictions on the Use of Pesticides.* Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City’s written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee’s primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee’s staff or contractors. If Licensee or Licensee’s contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

34.10. *MacBride Principles Northern Ireland.* Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

34.11. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

34.12. *Preservative-Treated Wood Containing Arsenic.* Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “**preservative-treated wood containing arsenic**” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the

Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “**saltwater immersion**” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

34.13. Notification of Limitations on Contributions. If this License is subject to the approval by City’s Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.13 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee’s board of directors, and Licensee’s principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee’s bid or contract. Additionally, Licensee certifies that if this Section 21.13 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

34.14. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

34.15. Conflicts of Interest. Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

34.16. Drug-Free Workplace. Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

34.17. Prevailing Wages and Working Conditions. Licensee shall comply to the extent applicable to Licensee with all prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section

1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee’s failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Licensee shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

34.18. *Consideration of Criminal History in Hiring and Employment Decisions.*

(a) Licensee agrees to comply with and be bound by all applicable provisions of Labor and Employment Code Division II, Article 142 (formerly San Francisco Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; “**Article 142**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee shall incorporate by reference the provisions of Article 142 in all sublicensees of some or all of the License Area, and shall require all sublicensees to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection shall constitute an Event of Default under Section 22.1(b) of this License.

(c) Licensee and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

(f) Licensee and sublicensees shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 142.8.

34.19. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Licensee's improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee's improvements or alterations, Licensee shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

34.20. San Francisco Bottled Water Ordinance. Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the

License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

34.21. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Licensee shall not install or permit any vending machine on the License Area without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall constitute an Event of Default under Section 22.1(b) of this License. Without limiting Port’s other rights and remedies under this License, Port shall have the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

34.22. Licensee’s Compliance with City Business and Tax Regulations Code. Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 34.24 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

34.23. Consideration of Salary History. Licensee shall comply if applicable with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K) (Consideration of Salary History Ordinance or “Pay Parity Act”). For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

35. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS.

No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License.

36. DOCUMENTS AND INFORMATION SHARING.

Licensee shall provide to Port and, upon request, to any other City department without charge, copies of all publicly-available documents required to be submitted to Regulatory Agencies in connection with the Utility Facility, including, copies of any studies, applications, reports, documents, memorandums, permit applications, permits, licenses, plans, drawings,

applications of rate approvals, or other agreements (collectively, “**Studies**”). Studies may be provided electronically in the format in which they were received by Licensee or in PDF format. Upon request, which shall identify the document(s) or categories of document(s) subject to the request, Licensee shall also provide the requesting City Department with supporting documentation for any Studies that Licensee is not contractually prohibited from sharing with a third party relating to the Project, including but not limited to, any Studies relating to the San Francisco transmission grid and its substations and any Studies (including but not limited to, Studies regarding marine resources, Hazardous Materials, geotechnical conditions, and navigation/shipping channel locations) related to alternative routing of submarine cables. In addition, Licensee shall, without charge, meet with Port or other City agencies as designated by Port as reasonably required to assist Port or City agencies in reviewing the Studies, determining their potential applicability to other City or Port projects, and assessing the feasibility of, or, under commercially reasonable prices and terms, assisting in or undertaking the construction of projects to the extent authorized by the Board of Supervisors. Such meetings shall take place at Port’s office or another location within the City, as designated by Port or another City agency.

For purposes of this Section, “Licensee” shall mean PG&E, an Affiliate of PG&E or any successor or assign.

37. ESTOPPEL CERTIFICATES.

Licensee shall execute and deliver the certificate form attached to this Lease as ***Exhibit B*** within ten (10) business days of receipt by Licensee of a written request by Port.

38. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this License, Licensee acknowledges and agrees that no officer or employee of City has authority to commit City to this License unless and until City’s Board of Supervisors shall have duly adopted a Resolution approving this License and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a Resolution, and this License shall be null and void if City’s Mayor and the Board of supervisors do not approve this License, in their respective sole discretion. Approval of this License by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted, nor will any such approval create any binding obligations on City.

39. MISCELLANEOUS PROVISIONS.

39.1. California Law; Venue. This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City’s Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

39.2. Entire Agreement. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this License.

39.3. Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

39.4. Severability. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

39.5. Interpretation of License.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either Party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

(g) The Party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

39.6. Successors. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

39.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

39.8. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

39.9. Electronic Signature. This License may be executed by electronic signatures and transmitted in a pdf version by email and such electronic signatures shall be deemed as original for purposes of this License and shall have the same force and effect as a manually executed original.

39.10. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

39.11. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

39.12. Time is of Essence. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

39.13. Cumulative Remedies. All rights and remedies of either Party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

39.14. Survival of Indemnities. Termination or expiration of this License shall not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

39.15. *Relationship of the Parties.* Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither Party shall act as the agent of the other Party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

39.16. *No Recording.* Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

39.17. *Additional Written Agreement Required.* Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or their designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

40. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"**ADA**" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"**Affiliate of PG&E**" shall mean (A) an entity that controls, is controlled by or is under common control with, PG&E, or (B) an entity that acquires all or substantially all of the business and assets of PG&E or a division thereof or results from a merger with PG&E or such a division. A party shall be deemed to "control" another party for purposes of the aforesaid definition only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party.

"**Agents**" when used with reference to either Party to this License or any other person, means the officers, directors, employees, agents, and contractors of the Party or other person, and their respective heirs, legal representatives, successors, and assigns. References in this License to a Party's acts or omissions will mean acts or omissions by that Party and its Agents and Invitees unless the context requires or specifically states otherwise.

"**Anniversary Date**" means the first and each subsequent anniversary of the Effective Date.

"**CEQA**" means the California Environmental Quality Act.

"**Claims**" mean claims, judgments, losses, costs, expenses, injuries, settlements, liens, damages, penalties, fines or liabilities.

"**days**" mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

"**Effective Date**" is defined in Section 5.

"**Emergency Condition**" is defined in Section 22.3.

"**Environmental Covenants**" means any recorded deed restrictions, as may be in effect from time to time, which impose conditions under which certain land uses will be permitted at designated portions of the License Area.

“Environmental Laws” means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this License. **“Environmental Laws”** include the City’s Pesticide Ordinance (Chapter 3 of the San Francisco Environment Code), the Soil Management Plan, and Environmental Covenants.

“Environmental Regulatory Action” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“Environmental Regulatory Approval” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

“Equipment Removal Plan” is described in Section 13.

“Event of Default” is defined in Section 22.1.

“Exacerbate” or “Exacerbating” “Exacerbate” or “Exacerbating” when used with respect to Hazardous Materials means any act or omission, including the disturbance, removal or generation of Hazardous Materials in the course of the Permitted Activities, that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission of Licensee or its Agents, or otherwise requires Investigation or Remediation that would not have been required but for such act or omission. **“Exacerbation”** has a correlating meaning.

“Expiration Date” is defined in Section 6.

“Fees” means the License Fee, if any, and all other fees, charges and sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 9.

“Force majeure” means a delay in Licensee’s performance of its obligations under this License to the extent caused by (a) acts of nature, enemy action, civil commotion, fire, flood, earthquake or other casualty, (b) strikes or other labor disputes (to the extent not resulting from the labor practices of Licensee), (c) material shortages of or inability to obtain labor or materials beyond the reasonable control of Licensee, (d) any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, brought by plaintiffs unaffiliated with Licensee that challenges the validity of: (A) any action taken by a Regulatory Agency in connection with the obligation to be performed, or (B) the failure of a

Regulatory Agency to impose conditions to a Regulatory Approval for the obligation to be performed or (C) the validity of any other Regulatory Approval required in connection with the obligation to be performed, and (e) delays by Regulatory Agencies in issuing requisite approvals or consents beyond the reasonable control of Licensee so long as Licensee is diligently proceeding to obtain the necessary Regulatory Approvals. Delays beyond Licensee's reasonable control exclude delays to the extent caused by the negligent act or omission or willful misconduct of Licensee.

"Force Majeure Delay" is defined in Section 14.2.

"Force Majeure Notice" is defined in Section 14.2.

"Handle" or **"Handling"** when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material.

"Hazardous Material" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified in the Soil Management Plan.

"Hazardous Materials Claim" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, over or under the License Area emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term.

"Horizontal DDA" is defined in Recital A.

"Horizontal Developer" is defined in Recital A.

"HRC" means the San Francisco Human Rights Commission.

"Indemnified Parties" means Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever.

"Indemnification" and **"Indemnity"** have correlating meanings.

“Interest Rate” means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

“Investigate” or **“Investigation”** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that may be located, have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property, or the environment, or events affecting receptors or the environmental condition in, on, over, or under, the License Area. Investigation will include, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“Invitees” means Licensee’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires and any other person whose rights arise through them.

“Late Charge” means a fee of ten percent (10%) of the amount outstanding.

“Law” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan) and any amendments, and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area including Regulatory Approvals issued to Port which require Licensee’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the Parties.

“License Area” is defined in Section 1.1.

“Master Lease” is defined in Recital A.

“Other Utilities” is defined in Section 1.2.

“Permitted Activities” is defined in 4.1.

“Prevailing Party” is defined in Section 31.

“Prohibited Use” is defined in Section 4.3.

“Project Site” is defined in Recital A.

“Regulatory Agency” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, potentially including the Federal Energy Regulatory Commission (“FERC”), the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port’s Chief Harbor Engineer, the United States Department of Labor, now or later having jurisdiction over Port property, Licensee, and the Project.

“Regulatory Approval” means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

“Release” when used with respect to Hazardous Materials means any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, releasing or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

“Remediate” or **“Remediation”** when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize,

monitor, remediate, or otherwise control Hazardous Materials located in, on, over, or under the License Area or which have been, are being, or threaten to be Released into the environment from the License Area or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“**Serviced Building**” is defined in the Basic License Information.

“**Soil Management Plan**” means that certain Soil Management Plan dated as of October 18, 2019 and prepared by Ramboll US Corporation for the Project Site, approved by Port, DPH, and DTSC, a copy of which is attached as ***Exhibit C*** hereto.

“**Studies**” is defined in Section 36.

“**SWPPP**” is defined in Section 16.5(a).

“**Term**” is defined in Section 6.

“**Utility Facility**” is defined in the Basic License Information.

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IN WITNESS WHEREOF, the undersigned have executed this License as of dates indicated below.

San Francisco Port Commission: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Elaine Forbes
Executive Director

Date Executed: _____

Licensee: **PACIFIC GAS AND ELECTRIC COMPANY,**
a California corporation

By: _____
Name: _____
Title: _____

Date Executed: _____

By: _____
Name: _____
Title: _____

Date Executed: _____

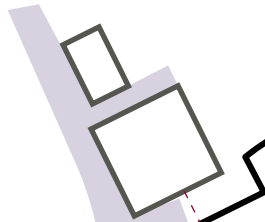
APPROVED AS TO FORM:
DAVID CHIU
CITY ATTORNEY

By: _____
Nancy Taylor
Deputy City Attorney

Drafted By: Caroline Morris, Project Manager _____
(initial)

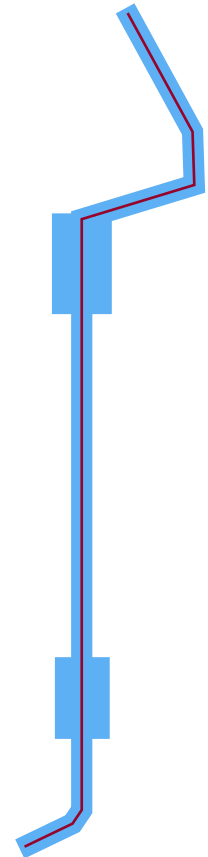
EXHIBIT A
LICENSE AREA

3RD STREET BRIDGE PILOT HOUSE



CHINA BASIN PARK

BLOCK A



License Area
approximately
82' long x 2'
wide (164 sqft)

EXHIBIT B
ESTOPPEL CERTIFICATE

The undersigned, _____, is the licensee of a portion of the real property commonly known as [Insert License Area Address/Location] located in San Francisco, California (the "Property"), and hereby certifies to THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port") [and to _____ ("Other Party")] the following:

1. That there is presently in full force and effect a license (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "License") dated as of _____, 20__, between the undersigned and Port, covering approximately ____ square feet of the Property (the "License Area").
2. That the License has not been modified, assigned, supplemented or amended except by:
3. That the License represents the entire agreement between Port and the undersigned with respect to the License Area.
4. That the commencement date under the License was _____, 20__, the expiration date of said License is _____, 20__.
5. That the present minimum monthly license fee which the undersigned is paying under the License is \$_____.
6. The security deposit held by Port under the terms of the License is \$_____ and Port holds no other deposit from Licensee for security or otherwise.
7. That the undersigned acknowledges that Port has no obligation to make any improvements to the License Area.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the License or otherwise against the fees or other charges due or to become due pursuant to the terms of the License.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the License, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the License by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the License, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the License by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, Other Party and [its/their respective] successors and assigns.

Dated: _____, 20__.

[Name of Licensee]

By:

Name:

Title:

EXHIBIT C
SOIL MANAGEMENT PLAN

Prepared by

Ramboll US Corporation
Emeryville, California
Irvine, California

Submitted to:

California Environmental Protection Agency
Department of Toxic Substances Control
Berkeley, California

San Francisco Department of Public Health
San Francisco, California

Project Number

1690001737

Date

October 18, 2019

SOIL MANAGEMENT PLAN
MISSION ROCK DEVELOPMENT
SAN FRANCISCO, CALIFORNIA

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1. INTRODUCTION

On behalf of Mission Rock Development Partners (Mission Rock), Ramboll US Corporation (Ramboll) has prepared this Soil Management Plan (SMP) related to redevelopment activities within the approximately 21 acre Mission Rock Development Project Area (Development Area or Site), including the former H&H Ship Service Company facility (Former H&H Facility) that was located at 220 Terry Francois/China Basin Street, San Francisco, California, in the northeast portion of the Site (see Figures 1 and 2). All portions of the Development Area are owned by the City and County of San Francisco (“Owner”) and are subject to a Master Lease and Disposition and Development Agreement between the Port of San Francisco and the Master Developer, Seawall Lot 337, Associates. The site will be subdivided to create development parcels, which will be leased by vertical developers for development. As discussed in further detail below, this SMP is intended to concurrently serve as a Site Mitigation Plan for the Development Area, as required by the City of San Francisco, and as an SMP required by the California Department of Toxic Substances Control (DTSC) for the Former H&H Facility. This SMP supersedes a previous SMP prepared in 1999 (Geometrix, 1999).

The Development Area is currently comprised of China Basin Park in the north, with the remaining and largest portion consisting of an asphalt-paved parking lot. The approximately 2.4 acre Former H&H Facility is located in the northeast corner of the surrounding Development Area. The property that is the Former H&H Facility is entirely within the asphalt-paved surface parking lot.

The Former H&H Facility has been subject to oversight by the DTSC since 1978, when the DTSC’s predecessor agency determined that some of the wastes handled by H&H were “hazardous wastes” under California law. The facility was closed under the DTSC corrective action program in phases, with DTSC approving facility closure in 1999. As part of the approval of the Former H&H Facility remediation, DTSC required the recordation of two DTSC-approved land use covenants (LUCs) for separate portions of the Former H&H Facility. One LUC, recorded in 2000, applies to a 1.8 acre portion of the Former H&H Facility (“2000 LUC Area”), and another LUC recorded in 2002 was recorded for a 0.6 acre area (“2002 LUC Area”) within the facility. Both LUCs outline certain land use restrictions and prohibit direct contact with “native” soils (i.e. historical fill material currently in place). To implement these requirements, both LUCs require a DTSC-approved SMP for the areas subject to the LUCs.

In light of the land uses projected for the Development Area (described in Section 1.7 below) and based on an updated Human Health Risk Assessment for those land uses, the Owner recently proposed revisions to the LUC recorded in 2000. DTSC approved those revisions on September 16, 2019, and an amended LUC for the 1.6 acre portion of the Former H&H Facility (the “2019 Amended LUC”) was recorded on September 24, 2019. The 2019 Amended LUC superseded the 2000 LUC, and continues to require an SMP for the area subject to the LUC.

In addition to DTSC oversight of the Former H&H Facility, the entire Development Area is subject to the requirements of Article 22A of the San Francisco Health Code (Maher Ordinance), which was adopted in 1986 by the San Francisco Board of Supervisors in response to public concern regarding hazardous materials exposure to fill material that was

placed in areas along the historical shoreline areas of San Francisco due to the placement of fill material after the 1906 earthquake and fire. The fill typically contains elevated concentrations of contaminants such as petroleum hydrocarbons and heavy metals. The applicability of the ordinance was expanded in 2013 to include areas in San Francisco with current or historical industrial use or zoning, areas within 100 feet of current or historical underground tanks or filled former Bay or creek areas and areas within 150 feet of a current or former elevated highway. For any site covered by the ordinance for which a City of San Francisco or Port of San Francisco building permit is necessary and for which there are plans to disturb at least 50 cubic yards of soil, the ordinance requires SFDPH review of the site history (e.g., a Phase I environmental site assessment), prior sampling data, future construction plans, and other available information. In a letter dated December 22, 2016, SFDPH confirmed that no additional sampling was necessary for Maher Ordinance compliance in relation to the Development Area, and requested the submittal and approval of a Site Mitigation Plan and Dust Control Plan for the project.

Based on the collective procedures and best management practices that will apply across the entire Development Area, this Soil Management Plan satisfies several regulatory requirements:

1. The requirements for a DTSC-approved SMP specified in the 2019 amended LUC and the 2002 LUC for the areas subject to those LUCs (i.e., the 2000 and 2002 LUC Areas, respectively).
2. The requirements for a Site Mitigation Plan for the entire Development Area under the Maher Ordinance.
3. In addition, a small portion of the Site (approximately 0.37 acres along the entirety of the southern Site boundary) was formerly located within the Mission Bay Redevelopment Area of San Francisco. This approximately 20 to 25 foot strip of land was historically known as Mission Bay Block (Parcel) 20. Although the Parcel 20 portion of the Site has been removed from the Mission Bay Redevelopment Area, it currently remains subject to the Mission Bay Risk Management Plan (RMP).¹

This SMP provides protocols and guidance that Site contractors must follow in the event that evidence of soils impacted by petroleum products or other contaminants are encountered during the Site demolition, grading, or other redevelopment activities at the Site. It also incorporates and implements certain requirements specified in the 2019 Amended LUC, including ensuring that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing soil.

The Owner, future and current lessees or sublessees, developers, occupants and managers, as well as contractors delegated or authorized to perform construction and/or property maintenance activities on their behalf ("Contractor"), are required to comply with the measures identified in this SMP when engaging in (or soliciting or directing others to engage

¹ In 2017, the San Francisco Regional Water Quality Control Board transferred authority for implementation of the RMP to SFDPH. See Section 3.10 and Attachment 5 for a summary of RMP-based requirements specific to this portion of the site.

in) the relevant activities discussed below. The LUCs recorded against portions of the Site also require the Owner, lessees, occupants and their agents to comply.

For that reason, as used in this SMP, the term “Responsible Entity” shall mean those persons (whether individuals, corporations, or other legal entities) on whose behalf the activities regulated by this SMP are conducted. For example, the Owner may contract with a third party to perform ground-intrusive activities in the parks or open spaces on the Site. Similarly, the San Francisco Department of Public Works may contract with a third party to install or repair utilities in the public streets within the Site, or a lessee may contract with a construction company or property maintenance company or similar entities to perform certain activities on the Site. In addition, a Master Association comprised of commercial and/or residential tenants at the Site may assume responsibility for maintaining certain buildings, other structures, and landscaped common areas, such that the Association contracts with third parties to conduct ground-intrusive maintenance activities. Each of these entities and their respective general contractors and other contractors performing such work are “Responsible Entities” or “Contractors” obligated to comply with this SMP. A former lessee, licensee, permittee, or other former holder of a property or contract right who, at such time when activities regulated by this SMP are conducted, no longer holds an interest in title to a parcel or no longer has a property or contract interest in a parcel, will not be considered a Responsible Entity for purposes of this SMP.

1.1 Purpose of SMP

The purpose of the SMP is to generally describe the procedures that will be employed when areas of known or potentially impacted soils are encountered during Site redevelopment activities. The SMP has been developed to facilitate the redevelopment of the Site, by outlining procedures that will be used for identifying, testing, handling, and disposal of impacted soil that may be encountered during the redevelopment activities. Implementing the procedures in this SMP will ensure that impacted soil (if encountered, see Section 3) is handled in a manner that is protective of human health and the environment, in accordance with State and local regulations.

The results of various subsurface investigations performed at the Site from 1994 to present are summarized in Section 1.5.

1.2 Site Setting

The Development Area is approximately 21 acres in size and is located adjacent to the Mission Bay neighborhood of San Francisco (Figures 1 and 2). The Development Area is bound by the San Francisco Bay to the north and east, Mission Rock Street to the south, and 3rd Street to the west. The Former H&H Facility was formerly located at 220 Terry A. Francois Boulevard/China Basin Street (as streets and addresses have changed over time, this location is west of Pier 54) in the northeast portion of the Development Area (Figures 1 and 2).

China Basin Park comprises the northern portion of the Development Area. The remainder of the Development Area is comprised of an asphalt-paved parking lot.

1.3 Site Background

Prior to 1906, the Development Area was comprised of shallow tidal flats of San Francisco Bay. In 1906, the Development Area and surrounding properties were created by filling and raising the land surface above the Bay following the 1906 earthquake and fire. After 1906, historical Site uses include railway yards and warehouses, metal fabrication and machine shops, truck repair shops, and shipping services.

1.3.1 Railway Yards and Warehouses

Between approximately 1913 and 1956, the Development Area was occupied by the Atchison, Topeka, and Santa Fe (ATSF) railway yards and associated structures, including storage warehouses on the western portion of the Development Area, a railroad supply depot on the southern portion of the Development Area, and a roundhouse south of the Development Area. Although the ATSF railway yards closed in the 1950s, the storage warehouses remained on Site as late as 1999.

1.3.2 Metal Fabrication and Machine Shops

Metal fabrication and machine shops were located in the northern portion of the Development Area from approximately 1949 to 1993.

1.3.3 Truck Repair Shops

Two truck repair shops operated in the northern portion of the Development Area beginning in 1968.

1.3.4 H&H Ship Services Company

In 1950, H&H began operating a marine and industrial tank cleaning facility at the Site. H&H's operations included cleaning bulk oil cargo and fuel tanks on ships and barges and recycling of waste oil and water. These activities were later found by DTSC's predecessor to be subject to hazardous waste regulation and in 1978, H&H began operating under Resource Conservation and Recovery Act (RCRA) interim status pending approval of its RCRA operating permit and facility upgrades. In 1982, H&H began underground storage tank (UST) cleaning operations, which involved cleaning and dismantling discarded USTs. The Former H&H Facility included the former Tank Transfer Area (TTA), which was located near Pier 48 and San Francisco Bay at the northeast side of the site, and the Tank Cleaning Area (TCA), Container Storage Unit (CSU) area, and Solidification Unit (SU), which were centrally located on Site.

In 1993 H&H ceased operations at the Site, and subsequently implemented closure activities under the DTSC corrective action program including removal of remaining hazardous wastes and equipment, and cleaning of remaining facilities e.g., concrete pads. Sampling was conducted at the Site in 1999 to document clean closure of H&H's hazardous waste management units. DTSC approved the final closure of the Former H&H Facility in 1999 subject to the placement of certain restrictions and requirements contained in land use covenants.

The 2000 LUC covered the former TTA operations. The 2002 LUC covered H&H's wastewater treatment and transfer operations (including the TCA, CSU, and SU) from approximately 1950 through 1996, including the use of aboveground storage tanks (ASTs) for receiving,

settling, and treating wastewater containing petroleum. Sampling at the 2002 LUC Area was conducted as part of closure activities in 1995, and additional samples were collected in 2001.

1.4 Site Geology and Hydrogeology

The Site and overall Development Area are currently relatively flat and at an elevation of approximately five feet above mean sea level (msl).

Approximately 13 to 37 feet of fill material underlays the Development Area, some of which may contain rubble and debris from the 1906 San Francisco earthquake and resulting fire. Beneath the fill is approximately 46 to 72 feet of compressible clay or "Bay Mud," under which is approximately 68 to 74 feet of medium stiff to stiff clay, or "Old Bay Clay." In some areas, dense to very dense sand layers are present beneath the Old Bay Clay. Bedrock is present at approximately 160 to 260 feet below ground surface (bgs).

Groundwater is anticipated to be present beneath the Development Area at depths of approximately seven to nine feet bgs, and due to proximity to San Francisco Bay, is likely to be tidally influenced.

1.5 Land Use Covenants for the Former H&H Facility

Two separate land use covenants (LUCs), or deed restrictions, address the Former H&H Facility within the Development Area:

The Former H&H Facility has been regulated by the DTSC since 1978. The 2000 LUC (which was superseded by the 2019 Amended LUC) did not allow the 1.8 acre 2000 LUC Area to be used for single family homes, hospitals, schools, or day care facilities, or for recreational uses with direct contact with soils.

In approving the 2019 Amended LUC, DTSC relied upon the Ramboll 2019 Updated Human Health Risk Assessment (Updated HHRA) and its recommendations. The Updated HHRA recommended that future building construction on the Site incorporate vapor intrusion mitigation systems (VIMS) to mitigate potential vapor intrusion risks to future occupants unless additional media sampling demonstrates that there is no unacceptable risk to future occupants via the vapor intrusion pathway. In addition, the Updated HHRA further recommended that, as part of the development plans, capping materials such as hardscape, streets, foundations, and imported clean fill will be placed over existing soil to prevent direct contact with the existing soil. Based on the implementation of these additional mitigation measures, the 2019 Amended LUC now allows residential, day care, and outdoor recreational uses provided that residential uses are not on the first floor, that all uses are separated from the existing soil by a capping material, and that no buildings be built without an engineered VIMS approved in advance by the DTSC subject to the further sampling caveat identified above. The Updated HHRA is further detailed in Section 1.5.2, below.

The 2002 LUC Area is currently occupied by China Basin Park and is subject to the 2002 LUC covering 0.6 acres of the northern-most portion of the Development Area, which was formerly occupied by H&H's treatment and transfer area. The 2002 LUC allows use of the subject area as a park, provided that specified conditions on future construction are met. China Basin Park consists of green space with ballpark and water views and the "Junior

Giants Baseball Field.” The area was determined to be acceptable under DTSC and SFDPH standards for development of China Basin Park and no changes to the 2002 LUC are necessary based on current Development Area plans that incorporate the current park.

1.5.1 Phase I and Phase II Environmental Site Assessments (ESAs)

Phase I ESAs were conducted by ERM-West (ERM) and Langan Engineering and Environmental Services, Inc. (Langan) on all or portions of the Development in 1994 and 2018, respectively. The presence of fill material containing low levels of petroleum hydrocarbons, volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and heavy metals was noted as a recognized environmental condition (REC) in Langan’s Phase I.

ERM conducted a Phase II ESA in 1995 and 1996 that included soil sampling. The results of the soil sampling are not available for review.

1.5.2 Updated Risk Assessment (for the 1.8 acre portion of the Former H&H Facility – the 2000 LUC Area)

A baseline risk assessment was conducted in 1999 by Harding Lawson Associates (HLA) based on the results of the soil and groundwater sampling at the H&H TTA and service yard. Geomatrix also conducted sampling across the site and presented a risk evaluation in 1999. The assessments concluded that the calculated non-cancer hazards and cancer risk levels did not pose a threat to any of the human (and in the case of the HLA report, biological) receptors.

In June 2019, Ramboll submitted the Updated HHRA for the Site to the DTSC. The Updated HHRA was based on data from the soil and groundwater sampling conducted by HLA in 1999. The following steps were recommended to be undertaken as part of the redevelopment of the Site, and were incorporated as requirements in the 2019 Amended LUC:

- Except as stated below, future construction of buildings at the Site (i.e., Blocks F, G, K and J) will incorporate VIMS to mitigate the potential risks of vapor intrusion to future Site occupants. VIMS details will be submitted in a subsequent design document for review/approval by DTSC.
- Absent further sampling, the VIMS design described above will be proposed to DTSC and (with DTSC approval) installed at the time of construction. However, if, prior to development, the Owner or Developer conducts additional sampling and DTSC concurs with the findings that the then-current concentrations do not pose an unacceptable risk to future occupants via the vapor intrusion pathway under both the residential and commercial scenarios, then the need for a VIMS beneath one or more future buildings may be reevaluated in consultation with DTSC.
- Future earth-disturbing activities associated with the redevelopment will be performed in accordance with an SMP, which will be submitted to the DTSC for approval prior to implementation. The SMP will include measures to mitigate potential risks to construction workers. The updated LUC will also describe measures to eliminate direct contact exposure to future Site occupants.

1.6 Known Contaminants of Potential Concern (COPCs)

Sampling conducted at the 2000 LUC Area, the 2002 LUC Area, and the remaining portions of the Development Area has identified a variety of chemicals that may be encountered in soil (fill material) that is affected by redevelopment activities, including petroleum hydrocarbons, VOCs, PAHs, and heavy metals such as arsenic and lead. In addition, it is possible that the fill material historically placed at the Site may contain naturally-occurring asbestos depending on the origin of the fill (e.g., native serpentinite bedrock present in some areas of San Francisco).

Groundwater is approximately 7 to 9 feet bgs and dewatering is expected to take place on an as-needed basis during excavation activities. Given the depth of groundwater and the anticipated dewatering activities as well as health and safety and personal protective measures outlined in Section 2, it is not anticipated that construction workers will come into direct contact with groundwater.

1.7 Planned Site Redevelopment

Plans for the Development Area consist of commercial, retail, and residential developments, as well as parks and open space, as shown on Figure 2, with individual buildings designated as Blocks A through K. Development plans specify that all residential uses will be on the second floor and above in the future buildings. No residential use at the ground level is anticipated; blocks designated for residential use will have non-residential ground level uses such as retail/commercial, restaurants, tenant amenity spaces, day care, and storage. The building blocks will be separated by roadways and open space as indicated in Figures 2 and 3. Key characteristics of the development plans include the following:

- Redevelopment is anticipated to include the addition of a minimum of two feet of clean fill in areas of open space and landscaping, with the remainder of the Development Area covered by pavement, sidewalks, hardscape, or building foundations. Street and building floor slab elevations will be raised up to approximately five feet above the existing surface grade to account for anticipated future sea level rise;
- First floor will be limited to commercial use (i.e., residential use will be limited to the second floor and above); and
- Drinking water will be provided by the San Francisco Public Utilities Commission and use of on-site groundwater will be prohibited.

2. WORKER HEALTH AND SAFETY REQUIREMENTS

The Responsible Entity and its Contractor² will be responsible for establishing and maintaining its own appropriate health and safety procedures to minimize worker and public exposure to Site contaminants during construction. These procedures will be documented in a Site-specific Health and Safety Plan (HASP), which will be prepared prior to beginning intrusive Site redevelopment activities.

The components of the Contractor's HASP shall be consistent with all applicable California Occupational Safety and Health Administration (Cal/OSHA) standards and currently available toxicological information. The Contractor and its subcontractors will assure that on-Site construction workers have the appropriate level of health and safety training and use the appropriate level of personal protective equipment, as determined in the HASP based upon the evaluated job hazards and relevant monitoring results. To the extent that any construction activities may constitute "clean-up operations" or "hazardous substance removal work" as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response (HAZWOPER), 8 Cal. Code Reg. § 5192, Contractor will assure that on-Site personnel conducting such activities, who may contact chemicals in soil have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards ("HAZWOPER-trained personnel"). Soil that is visibly stained, discolored, shiny, or oily, or has a noticeable odor, will be handled only by such HAZWOPER-trained personnel until the Environmental Professional(s) (personnel to be determined by the Responsible Entity and/or Contractor; for the purposes of the initial development,) evaluates the situation (see Section 3) to understand whether the soil contains unacceptable concentrations of contaminants.

2.1 Site Specific Health and Safe Plan Components

The required components of the HASP are outlined below. The HASP should be tailored to current Site conditions, current occupational safety and health standards, and task-specific activities then known to the preparer of the HASP.

2.1.1 Key Personnel/Health and Safety Responsibilities

This section of the HASP will identify the Contractor's key personnel by name and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the Site. The Contractor will provide its employees who will potentially contact soil or previously unidentified soil contamination a copy of the HASP and brief its employees as to its contents. The health and safety responsibilities of each individual worker will be described in this section of the HASP.

2.1.2 Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with soil or previously unidentified contamination will be presented in this section of the HASP. The hazards that will be discussed include, at a minimum, chemical, temperature, and explosion hazards, if applicable. As part of the job hazard analysis, the HASP will identify the chemicals likely to be encountered during the

² For the initial major phases of redevelopment, the general contractor is anticipated to be Granite Construction, Inc.

construction activities and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit [PEL]). The procedures to mitigate the hazards identified in the job hazard analysis will also be presented in this section of the HASP. The use of appropriate Personal Protective Equipment (PPE) will likely be the principal mitigation procedure.

2.1.3 Personal Protective Equipment

This section of the HASP will identify the PPE that will be used to protect workers from the identified COPCs present in soil. Personal Protective Equipment will be selected based on the COPCs identified at the work site, and the known route(s) of entry into the human body. The primary exposure routes include direct contact with soil and inhalation of dust.

Although considered unlikely, certain construction activities, such as the installation of deep utility trenches or foundations, could result in workers coming into direct contact with groundwater. This contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavations. In the event that excavations are conducted in areas and groundwater is encountered, the HASP will identify any additional PPE required to minimize direct contact with COPCs in water, including water repellent gloves and boots.

2.1.4 Work Zones and Site Security Measures

This section of the HASP will identify the specific work zones of the construction site and describe the site security measures, such as the placement of barricades, fencing, access control, and access logs. All workers within the work zone, who will have direct contact with soil, will perform the work in compliance with relevant aspects of the HASP. The support zone will be located outside of the work zone, but within the boundaries of the construction site. All end-of-the day cleanup operations, such as cleaning of truck wheels (for vehicles exiting the construction site that could be tracking contaminated soils off Site), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the construction site. The entire construction site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

2.1.5 Decontamination Measures

This section of the HASP will describe the specific procedures that will be used to decontaminate both equipment and personnel that have been performing work in direct contact with soil. Decontamination measures will include cleaning the wheels of all vehicles that have been in contact with soil in the support zone prior to their exiting the Site. Additionally, workers will be required to remove any contaminated PPE and place it in a designated area in the support zone prior to leaving the Site.

2.1.6 General Safe Work Practices

This section of the HASP will discuss the general safe work practices to be followed at the construction site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, precautions near heavy equipment, confined space entry, and any special precautions that may be specific to the construction site and construction worker.

2.1.7 Contingency Plans/Emergency Information

This section of the HASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash stations, first aid kits, and fire extinguishers will be presented, and emergency telephone numbers and contacts will be identified. A map indicating the route to the nearest hospital will also be provided in this section of the HASP.

2.1.8 Medical Surveillance

This section of the HASP will describe medical surveillance that would be required for certain workers. To the extent that any construction activities may constitute “clean-up operations” or “hazardous substance removal work” as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, 8 Cal. Code Reg. § 5192, each construction Contractor will assure that its on-site personnel conducting such activities have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards (“HAZWOPER-trained personnel”).

2.1.9 Construction Safety Measures

These procedures include construction safety measures for excavations and require preparation of activity hazard analyses.

3. SOIL AND GROUNDWATER MANAGEMENT DURING EXCAVATION AND GRADING

To mitigate potential concerns related to contact with soil that may be contaminated during future grading at the Site, soil management procedures are described below.

3.1 Dust Control

At the request of SFDPH, a separate Dust Control Plan (DCP) has been prepared for redevelopment activities at the Site (an original draft of this document included both elements of the SMP and DCP), and is being issued in parallel to this SMP. An Asbestos Dust Mitigation Plan (ADMP) developed in accordance with Bay Area Air Quality Management District (BAAQMD) requirements has also been prepared under separate cover.

Dust control measures will be implemented during construction activities at the Site to minimize the generation of dust. It is particularly important to minimize the exposure of on-Site construction workers to dust and to prevent dust from migrating off Site. Dust generation may be associated with concrete foundation slab and paving removal and processing (including potential concrete grinding for reuse at the Site), excavation and grading activities, truck traffic, ambient wind traversing soil stockpiles, loading of transportation vehicles, and other earthwork.

3.2 Procedures for Soil Inspection and Notifications

During grading and excavation activities, potentially contaminated soil may be identified via observation of any of the following characteristics:

- Presence of free product. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on soil or water.
- Oily or other staining. Oily staining is not consistent in appearance, but often has a black, dark gray, dark brown, or greenish hue. Other unusual staining or soil discoloration (e.g., blue soils) should also be considered potential evidence of contamination.
- Petroleum or Chemical Odor. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered. If odorous soil or debris is encountered, the material may be contaminated and should be evaluated as soon as possible by field screening with a PID and, if warranted based on the field screening results, sampling for laboratory analysis. Areas exhibiting elevated PID readings above health and safety action levels should not be entered until laboratory data is available to evaluate potential health risks.
- Presence of Elevated Metals. Elevated metals in soil may be identified by strong and sometimes bright discoloration. Any chemical or metal odor should be noted regardless of whether a visible sign of elevated metals is encountered.
- Presence of Waste Debris. If debris such as concrete, scrap metal, bricks or other garbage is identified, the debris and surrounding soil may be contaminated.

- Presence of serpentine-containing fill materials or base rock. If dark gray or greenish serpentine rock (potentially having white fibrous inclusions) is identified, the fill material may potentially contain naturally-occurring asbestos (NOA).

Evaluation of whether soil is potentially contaminated should include input from the Environmental Professional(s) (for the initial redevelopment phase, these personnel are listed in Attachment 1).

Upon identification and confirmation that soil is potentially contaminated, the following actions should immediately be taken:

1. Stop work in the area of impact.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. Complete the Field Reporting Form (Attachment 2) (see Section 3.2.1 for further information relating to documentation).
4. Contain the impacted material, as instructed (see Section 3.2.2 for additional information relating to containment of potentially impacted material).
5. Work should not resume within the area of potential impact until clearance is received from the Environmental Professional.

A copy of this SMP will be kept in project construction trailers (or office, as appropriate) for reference and use in the event that potentially contaminated soil is encountered.

3.2.1 Documentation

In the event potentially contaminated soil and material are encountered during construction activities, information regarding the characteristics, location, and extent of the soil and material impacts must be collected. This information should be documented as follows:

- The approximate location (marked on a site map).
- Extent of potential contamination (How large an area of impacts has been identified?).
- What indications of potential impacts were observed (Odor? Discoloration? Free product? Waste material?).
- Is groundwater or a surface water body (surface puddles not included) impacted (sheen or product on water surface?).
- If possible, take photographs.

3.2.2 Containment

If instructed to do so, the reporting individual should work with the Contractor to contain the potentially-impacted soil and material. The Environmental Professional(s) will evaluate whether potentially-impacted soil and material should be contained based on information provided. The purpose of containment is to ensure that potentially impacted soil does not spread to other portions of the Site or mobilize off Site in the event of rain.

Generally, containment will include one or more of the following steps:

- Relocation of impacted soils to a constructed containment cell created using an earthen berm lined with plastic sheeting. Soils placed within containment cells are subsequently covered with plastic sheeting that extends outside the cell and is sufficiently anchored to minimize exposure to wind and rain.
- Covering impacted soil and material with plastic sheeting and marking the area "Do Not Disturb."
- Placement of silt fencing around the area of potential impacts.
- In the event that free product is observed, applying oil dry or sorbent cloths to soak up oily material.

3.2.3 Site Investigation and Disposal of Impacted Soil

If necessary and as requested by the Responsible Entity, the Contractor, SFDPH, or DTSC, the Environmental Professional(s) will mobilize to the Site to further investigate the nature and extent of the potential contamination. Further investigation including sampling of the soil and/or excavation may be warranted depending on Site conditions.

If necessary, impacted soil will be transported off Site for appropriate disposal per Section 3.7.

3.2.4 Waste Segregation Operations

If soil is determined following laboratory analysis to contain COPCs and off-Site removal of the soil is required, such soil will be segregated and stockpiled in separate containment areas to prevent mixing with non-impacted soil. Soil stockpiles shall be documented (e.g., labeled, identified on a figure or map along with approximate volume estimates) by the Contractor and/or Responsible Entity. Any waste that is determined to be hazardous shall be managed, transported and disposed in accordance with applicable hazardous waste requirements under RCRA (e.g., 90-day limit on site). Information regarding transportation and disposal is presented in Section 3.7.

3.2.5 Decontamination Procedures

If soil containing COPCs is identified by the Contractor during excavation/grading activities, the Environmental Professional(s) will develop and oversee appropriate decontamination procedures for the field personnel and equipment that have come into contact with soil containing COPCs. Specific procedures may vary depending on the type of contamination that is identified.

3.3 Procedures for Groundwater Inspection and Reporting

Based on anticipated depth to groundwater and implementation of localized construction dewatering, it is not expected that grading and excavation work up to five and six feet bgs will encounter groundwater. It is expected that localized dewatering will take place for excavations that are deep enough to encounter groundwater (e.g., future roadways). Construction dewatering via temporary wells will be discharged to the sanitary sewer (with the approval of the San Francisco PUC) or to San Francisco Bay (with the approval of the San Francisco Bay Regional Water Quality Control Board [SFRWQCB] under a National Pollutant Discharge Elimination System [NPDES] permit). Under either discharge scenario, groundwater sample(s) will be collected and analyzed in order to obtain discharge approval. Discharge requirements are project specific and are not specified by this document.

If encountered during excavation, to identify if groundwater is impacted by contaminants, the Responsible Entity, Contractor and/or Environmental Professional will first evaluate whether the soil in the immediate proximity is impacted (see Section 3.2), via field observations such as the following:

- *Presence of Free Product*. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on top of water.
- *Presence of Chemical Odor*. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered.

Such groundwater will be initially segregated by pumping into appropriate containers for permitted discharge or off-site transport for disposal (Section 3.7). Upon characterization, disposal may be via discharge to the on-site dewatering treatment system (if acceptable), or transported off site. The procedures for notification and reporting of impacted groundwater are the same as those prescribed for soil, as detailed in Section 3.2.

Discharge of water generated during large-scale construction activities to surface waters will be performed under a state-specific NPDES permit or under the requirements of the local permitting authority (e.g., municipal wastewater agency). Prior to any large site redevelopment (i.e. greater than one acre), a SWPPP must be developed. The SWPPP must comply with the requirements of the applicable state and/or local environmental agency.

3.4 Management of Buried Drums, Tanks or Abandoned Pipes

If buried drums, USTs, underground hydraulic lifts, or abandoned pipes are encountered during construction, the following actions should immediately be taken:

1. Stop work in the area where the buried drums, tanks and/or pipelines were identified.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. The Contractor or the Environmental Professional(s) should notify the appropriate local, state, and/or federal agency of the discovery if required by applicable regulations. Removal permits may be required for certain features (e.g., USTs, hydraulic lifts).
4. Mark the location on a site map and take photographs if possible.

If potentially contaminated soil is co-located with the drums, tank and/or pipes, then the procedures identified in Section 3.2 with respect to the potentially contaminated soil should be implemented.

3.4.1 Buried Drum Removal

Buried drums and their contents shall be removed from the excavation. The drums and contents should be placed in a sealed bin or bermed area that is covered with visqueen or other material to prevent discharge to soil or the atmosphere. Drum contents shall be characterized by the Environmental Professional(s) in accordance with hazardous waste laws and regulations and profiled for off-site disposal as required by the disposal facility. Following characterization, drums and contents shall be transported off site for disposal at an authorized facility in accordance with applicable laws and regulations.

3.4.2 Tank and/or Pipeline Removal

If USTs and associated piping systems are discovered during grading and excavation activities, removal shall be performed under appropriate permits and agency oversight. Collection of soil samples is likely to be required, and the Contractor performing the removal shall prepare or provide the Environmental Professional(s) with appropriate information with which to prepare a UST removal report.

3.5 Spills

In the event of a release of equipment fuel or other chemical, the Contractor will take the following actions, using appropriately trained personnel and appropriate personal protective equipment (PPE) as defined by the Contractor's health and safety plan:

Immediately clean up the spill to the extent possible

- If possible and appropriate for the situation, place containers under leaking equipment or damaged equipment or containers on secondary containment.
- Spills onto hard surfaces can be cleaned up by applying sorbent cloths or quick-dry material to the spill and subsequently containerizing the sorbent material in a rain-proof container, such as a 55-gallon drum.
- Spills onto soil can be cleaned up by excavating impacted soils and placing them into rain-proof containers or by creating a bermed, plastic-lined area to contain the impacted soils (see Section 3.2.2).

Report the Spill

- As soon as possible, following initial spill cleanup, contact the individuals identified in Attachment 1 to report the spill. In addition, the Environmental Professional(s) after consultation with the Responsible Entity or Contractor (as appropriate) should notify the appropriate local, state, and/or federal agencies of the spill if required by applicable laws or regulations.

Document the Spill

- Once initial spill response has been conducted, complete the Spill Reporting Form included as Attachment 3 and provide copies of the completed form to the individuals identified in Attachment 1. If possible, take photographs of the spill, spill area, and/or spill response activities.

Final Reporting

- Following cleanup of the spill, the Environmental Professional(s) will, if requested by Responsible Entity and/or required by applicable laws or regulations, report the results of cleanup activities to the appropriate agencies.

Obtain Approval Before Resuming Work

- Approval should be obtained from the Environmental Professional(s) before resuming work within the potentially affected area of the Site.

3.6 Notification of Discovery

If determined to be required and/or necessary and at the request of and on behalf of the Responsible Entity or Contractor, the Environmental Professional(s) will make the

appropriate notifications and report environmental findings to relevant agencies. Examples of such reportable findings may include discovery of significant impacts, free product, USTs, drums, or other subsurface features indicative of a known or potential release to the subsurface.

3.7 Off-Site Disposal

Soil that will be removed from the Site for off-site disposal will be characterized prior to transportation off site. Soil samples representative of the volume to be transported off site will be collected in-situ and/or from stockpiles and characterized using an analytical program developed in consideration of off-site disposal facility or third party acceptance requirements, and the DTSC's Information Advisory on Clean Imported Fill Material (Attachment 4). The soil to be off-hauled will be accepted by the disposal facility or third party prior to being removed from the Site.

All water to be removed from the Site, including excavation dewatering, storm water and vehicle wash water will be handled, and if necessary, transported and disposed in accordance with applicable local, state and federal regulations. Contaminated water will not be discharged to the land surface or subsurface of the Site. If encountered, impacted groundwater may be stored on Site temporarily pending characterization and disposal via transport to an off-site disposal facility, or via permitted discharge. Discharge to the sanitary sewer system is typically subject to the requirements of the local permitting authority (e.g., municipal wastewater agency), and depending on available characterization data, the agency may require additional sampling, on-site pre-treatment, and/or specify other limitations or conditions.

The Contractor, on behalf of the Responsible Entity, will arrange for transportation of all wastes off site using a permitted, licensed, and insured transportation company, and will be responsible for tracking final soil dispositions at appropriate disposal facilities. The Contractor must obtain approval from the Responsible Entity when identifying a potential disposal facility. Any soil considered Federal Resource Conservation and Recovery Act (RCRA) or California (non-RCRA) hazardous waste (hazardous waste) will be tracked using the Uniform Hazardous Waste Manifest System (USEPA Form 8700-22), as applicable. An appropriate USEPA Generator Identification Number will be recorded on the hazardous waste manifests used to document transport of hazardous waste off site. The hazardous waste transporter, disposal facility, and U.S. Department of Transportation (DOT) waste description required for each manifest will be determined on a case-by-case basis. Soil not considered hazardous waste will be tracked using non-hazardous bills of lading. These two systems will be used to comply with appropriate federal, state, and local requirements.

The Contractor will be responsible for accurate completion of the hazardous waste manifests and non-hazardous bills of lading. Records of all wastes shipped off site, including manifests and bills of lading, will be maintained by the Contractor and will be provided to the Environmental Professional(s) within a reasonable time, as they are generated, and included in the completion summary or report prepared at the conclusion of the project.

3.8 On-Site Soil Reuse

During initial redevelopment, soil on Site may be moved within site boundaries, and re-used without need for sampling, provided the soil is not obviously impacted (e.g., based on visual

or olfactory observations noted above), and is not generated in close proximity (i.e., within 20 feet) of impacted areas. The Environmental Professional shall be consulted and provide approval prior to reusing soil on Site. An on-site inspection by the Environmental Professional may be required.

As noted in Section 1, LUC areas are required to ensure that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing “native” soil.

Following completion of initial construction activities and within the boundaries of the LUC areas, soil that is impacted (or generated from areas in close proximity as described above), located beneath hardscaped areas, or located beneath the demarcation layer may not be re-used on site.

If sampling is conducted and soil is proposed for on-site reuse, sample data will be compared to then-current regulatory screening criteria appropriate for the proposed area of reuse (e.g., residential or commercial land use criteria such as DTSC Screening Levels [SLs], USEPA Regional Screening Levels [RSLs], or SFRWQCB Environmental Screening Levels [ESLs]). Soil that meets residential screening criteria may be reused without restriction, except for in the LUC areas as described above. Because health risk based screening criteria for arsenic are typically well below concentrations typically found in native soil in the Bay Area, the comparison criterion for arsenic will be 11 milligrams per kilogram (mg/kg), which is considered representative of typical Bay Area background concentrations (Duvergé, 2011).

3.9 Import Fill

No backfilling of an area containing potentially contaminated soil will be conducted without prior approval from the Environmental Professional(s).

Evaluation of any imported fill soil for the presence of contaminants must be concluded prior to consideration for use at the site (e.g. as backfill for excavations or trenching, or for raising site elevations). Unless from a documented “clean” import fill source such as a quarry, import fill will be evaluated to confirm the absence of chemical contaminants in accordance with the DTSC Information Advisory on Clean Imported Fill Material (Attachment 4).

Requirements for soil generated on Site that is proposed for re-use are outlined above.

Import fill data will be compared to DTSC SLs, USEPA RSLs, or SFRWQCB Environmental Screening Levels based on direct exposure and and/or vapor intrusion concerns, whichever is more stringent. As noted above, the comparison criterion for arsenic will be 11 mg/kg.

If the source location for the import fill cannot provide appropriate documentation acceptable to the Responsible Entity, Owner, and/or Environmental Professional(s) (e.g., data demonstrating that the soil does not contain unacceptable concentrations of contaminants), evaluation of the material should be conducted before it is transported and placed at the site. Information regarding import fill will be included in the completion summary or report prepared at the conclusion of the project.

3.10 Mission Bay RMP Requirements Summary (Applicable to Parcel 20)

Work conducted along the southern boundary of the Site (Mission Bay Parcel 20) shall be conducted in accordance with the Mission Bay RMP. The RMP for Mission Bay was prepared

in 1999 and provides specific protocols for managing chemicals in soil and groundwater in a manner that is protective of human health and the environment. The RMP was approved by the SFRWQCB with significant input from the DTSC and the SFDPH. Initially, the SFRWQCB was designated as lead agency for the Mission Bay Redevelopment Area, a responsibility that the agency passed to the SFDPH in approximately 2017.

The RMP delineates the specific risk management measures that must be implemented prior to, during, and after development of each parcel within the Mission Bay Redevelopment Area. Text of the Mission Bay RMP is included as Attachment 5 of this document; notification and reporting requirements (generally outlined in Sections 3 through 5 of the RMP) include a pre-work notification of plans for earth work, quarterly reporting regarding dust control activities, soil stockpile inspections and any new discoveries (e.g., USTs), a final completion report, and annual inspections. Many of these requirements overlap with the procedures outlined in this SMP.

3.11 Reporting

A Completion Report shall be prepared by the Responsible Entity following completion of activities covered by this SMP, in accordance with SFDPH requirements and the Maher Ordinance. The report shall describe SMP implementation, including a description and chronology of events, summary of any new analytical data collected, documentation regarding off-site disposal, and other backup information (e.g., figures, data tables, lab reports, hazardous waste manifests). The document will also be used to satisfy completion requirements for the portion of the site subject to the Mission Bay RMP.

In addition, in accordance with the 2019 Amended LUC, the Owner or Owner's designee shall conduct an annual inspection of the portion of the site to which the 2019 Amended LUC applies, verifying compliance with the LUC and shall submit an annual inspection report to the Department for its approval by January 30th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the annual inspection identifies any violations of the 2000/2019 LUC during the annual inspection or at any other time, the Owner or Owner's designee must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the LUC; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of the LUC shall be sent to the DTSC within 10 calendar days of its original transmission.

3.12 Future SMP Modifications

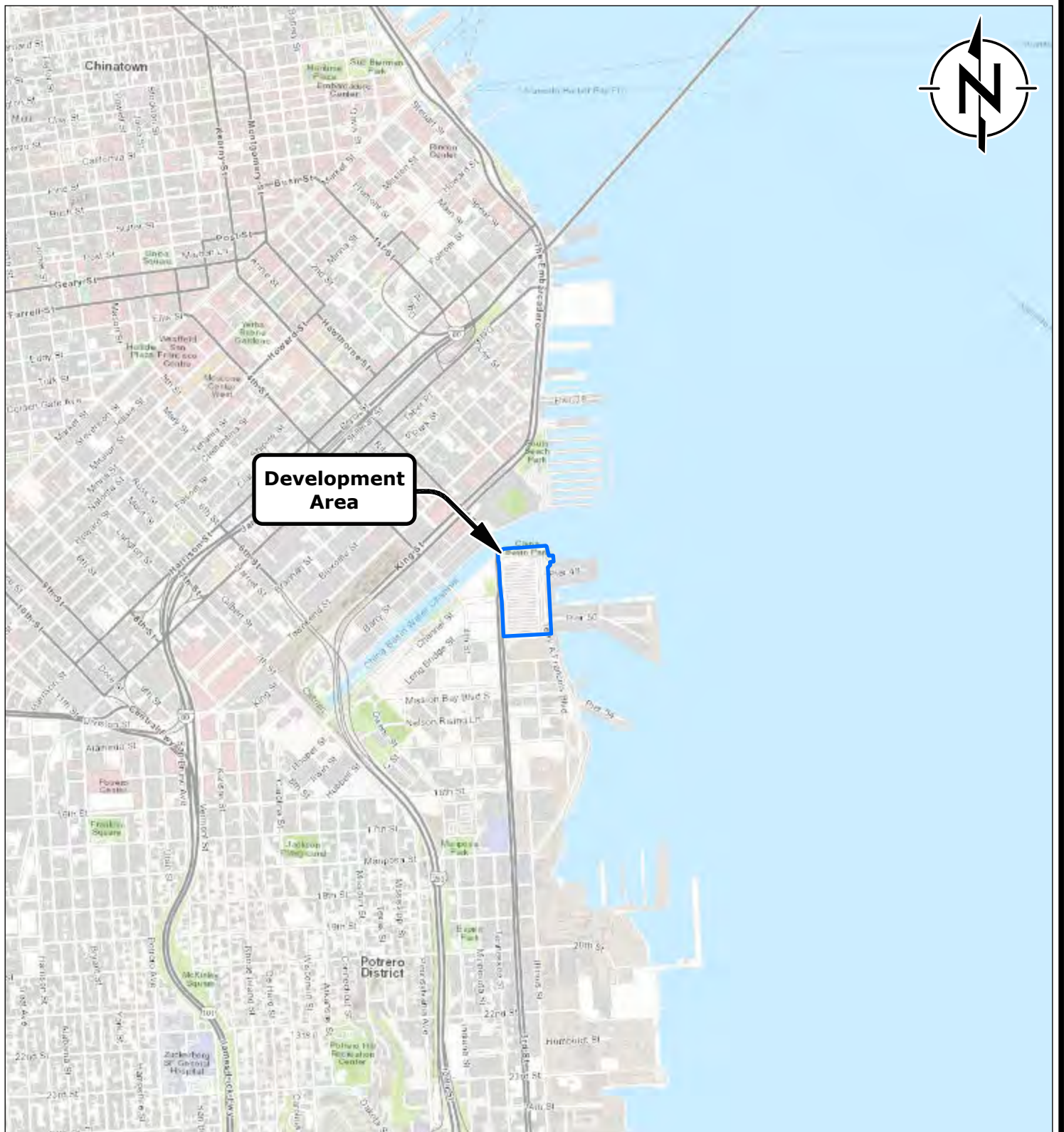
As redevelopment progresses, this SMP may require updates or modifications to accommodate changes in Site conditions or redevelopment plans, or to address localized issues that may arise during construction activities. Such requests for modification will be included in an SMP amendment, and (as warranted) submitted to SFDPH (and DTSC, if pertinent to a LUC Area) for review and approval.

4. REFERENCES


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FIGURES

C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 1 - Site Location Map



Legend

 Development Area

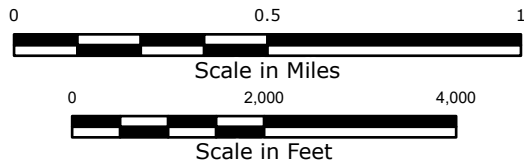
SOURCE:

The National Map, 2018.

Map Scale: 1: 1:24,000

Spatial Reference

Name: NAD 1983 StatePlane California III FIPS 0403 Feet; Map Center:



KEY MAP



Project Location Map
Mission Rock Development Area
San Francisco, California

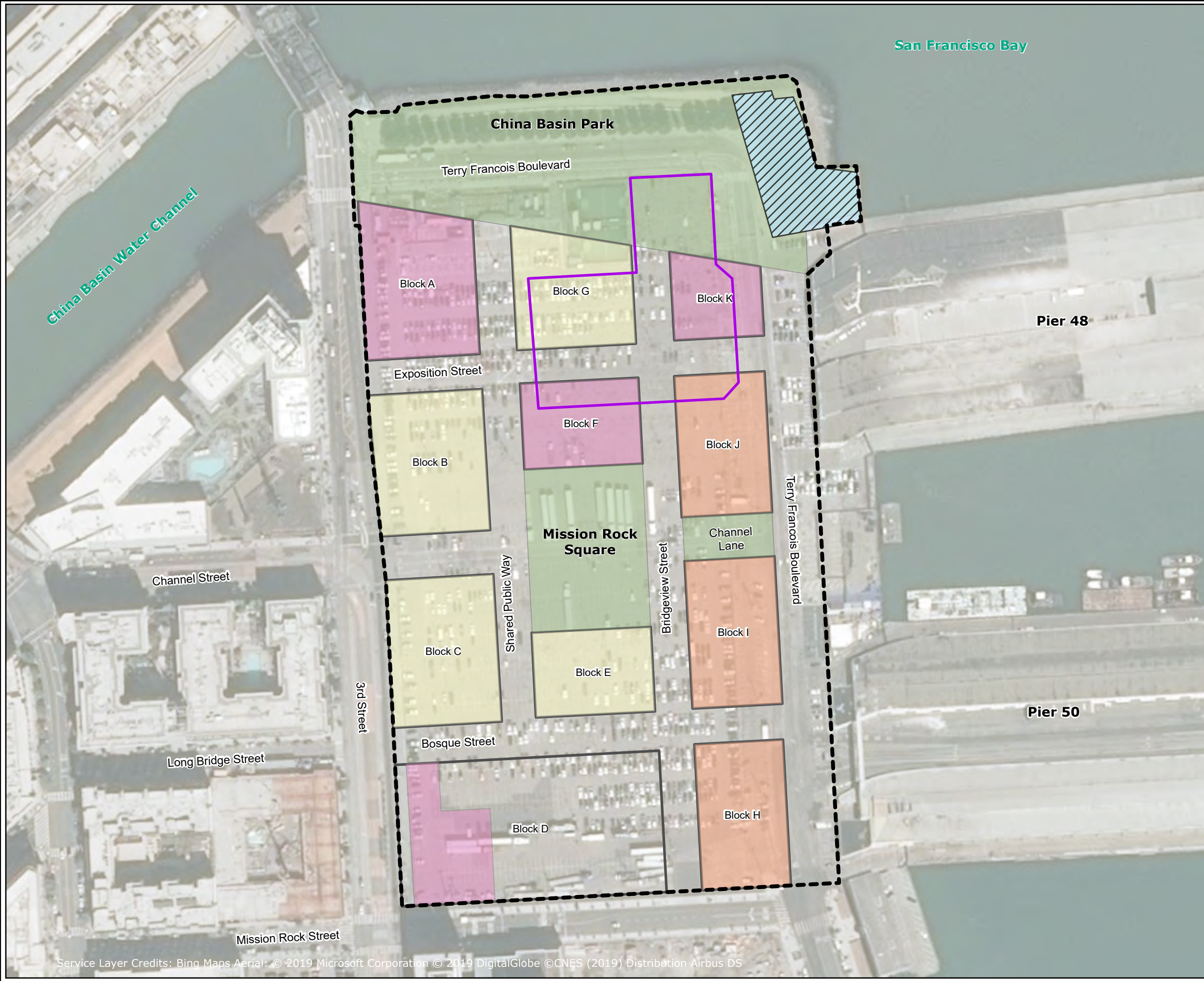
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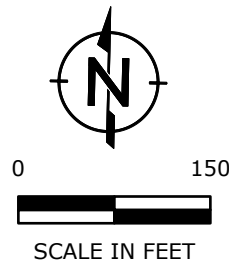
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C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 2 - Site Plan



Service Layer Credits: Bing Maps Aerial: © 2019 Microsoft Corporation © 2019 DigitalGlobe ©CNES (2019) Distribution Airbus DS

- Legend**
- Development Boundary
 - Site Boundary
 - 2002 LUC Area (approximate)
 - Proposed Land Use
 - Commercial
 - Open Space
 - Residential
 - Flex Residential/Commercial
 - Block Boundary



Project Layout		
Mission Rock Development Area San Francisco, California		
RAMBOLL		FIGURE 2
DRAFTED BY: REBECCACASE	DATE: 7/17/2019	PROJECT: 1690001737

ATTACHMENT 1
CONTACT INFORMATION FOR NOTIFICATION

NOTIFICATION INFORMATION (UPDATE AS NEEDED)

Name (Entity)	Responsibilities	Contact Details
Steve Minden (Tishman Speyer)	Responsible Entity Representative	O: (415) 536 1850 C: (213) 458 1272 SMinden@TishmanSpeyer.com
To Be Determined	Contractor Representative	O: C:
Nick Walchuk, PG (Ramboll)	Environmental Professional	O: (510) 420-2559 C: (510) 847-5905 nwalchuk@ramboll.com

ATTACHMENT 2
FIELD REPORT FORM

Field Reporting Form – Potentially Contaminated Soil		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional(s)		
Soil Information		
Describe the potentially-impacted material (e.g. discoloration/staining, odor, oily sheen, presence of free flowing or floating oil/petroleum, serpentine-containing fill material, etc.)		
Estimated Extent of Potentially Impacted Soil (ft) (horizontal and vertical):		
<ul style="list-style-type: none"> Estimated horizontal extent (in feet): Estimated depth below ground surface (in feet): 		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Groundwater and Surface Water Information		
If impacts were discovered while excavating, was water encountered? YES / NO		
If groundwater was encountered, was any sheen or oil visible on the surface of the water? YES / NO		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

ATTACHMENT 3
SPILL REPORTING FORM

Spill Reporting Form		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional		
Spill Information		
What kind of material was spilled?		
What is the estimated volume of material spilled (in gallons)?		
Was the material spilled on a paved (asphalt/concrete) surface or on bare ground?		
Did any of the spilled material enter storm water or sewer drains, enter drainage ditches, or leave the site?		
Estimated Extent of the spill-affected area: <ul style="list-style-type: none">• Estimated horizontal extent (in feet):• Estimated depth below ground surface (in feet):		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

ATTACHMENT 4
DTSC'S INFORMATION ADVISORY
ON CLEAN IMPORTED FILL MATERIAL

October 2001

Information Advisory

Clean Imported Fill Material



DEPARTMENT OF TOXIC SUBSTANCES CONTROL

It is DTSC's mission to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.

State of California



California
Environmental
Protection Agency



Executive Summary

This fact sheet has been prepared to ensure that inappropriate fill material is not introduced onto sensitive land use properties under the oversight of the DTSC or applicable regulatory authorities. Sensitive land use properties include those that contain facilities such as hospitals, homes, day care centers, and schools. This document only focuses on human health concerns and ecological issues are not addressed.

It identifies those types of land use activities that may be appropriate when determining whether a site may be used as a fill material source area. It also provides guidelines for the appropriate types of analyses that should be performed relative to the former land use, and for the number of samples that should be collected and analyzed based on the estimated volume of fill material that will need to be used. The information provided in this fact sheet is not regulatory in nature, rather is to be used as a guide, and in most situations the final decision as to the acceptability of fill material for a sensitive land use property is made on a case-by-case basis by the appropriate regulatory agency.

Introduction

The use of imported fill material has recently come under scrutiny because of the instances where contaminated soil has been brought onto an otherwise clean site. However, there are currently no established standards in the statutes or regulations that address environmental requirements for imported fill material. Therefore, the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has prepared this fact sheet to identify procedures that can be used to minimize the possibility of introducing contaminated soil onto a site that requires imported fill material. Such sites include those that are undergoing site remediation, corrective action, and closure activities overseen by DTSC or the appropriate regulatory agency. These procedures may also apply to construction projects that will result in sensitive land uses. The intent of this fact sheet is to protect people who live on or otherwise use a sensitive land use property. By using this fact sheet as a guide, the reader will minimize the chance of introducing fill material that may result in potential risk to human health or the environment at some future time.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.dtsc.ca.gov.

Overview

Both natural and manmade fill materials are used for a variety of purposes. Fill material properties are commonly controlled to meet the necessary site specific engineering specifications. Because most sites requiring fill material are located in or near urban areas, the fill materials are often obtained from construction projects that generate an excess of soil, and from demolition debris (asphalt, broken concrete, etc.). However, materials from those types of sites may or may not be appropriate, depending on the proposed use of the fill, and the quality of the assessment and/or mitigation measures, if necessary. Therefore, unless material from construction projects can be demonstrated to be free of contami-

nation and/or appropriate for the proposed use, the use of that material as fill should be avoided.

Selecting Fill Material

In general, the fill source area should be located in nonindustrial areas, and not from sites undergoing an environmental cleanup. Nonindustrial sites include those that were previously undeveloped, or used solely for residential or agricultural purposes. If the source is from an agricultural area, care should be taken to insure that the fill does not include former agricultural waste process byproducts such as manure or other decomposed organic material. Undesirable sources of fill material include industrial and/or commercial sites where hazardous ma-

Potential Contaminants Based on the Fill Source Area

Fill Source:	Target Compounds
Land near to an existing freeway	Lead (EPA methods 6010B or 7471A), PAHs (EPA method 8310)
Land near a mining area or rock quarry	Heavy Metals (EPA methods 6010B and 7471A), asbestos (polarized light microscopy), pH
Agricultural land	Pesticides (Organochlorine Pesticides: EPA method 8081A or 8080A; Organophosphorus Pesticides: EPA method 8141A; Chlorinated Herbicides: EPA method 8151A), heavy metals (EPA methods 6010B and 7471A)
Residential/acceptable commercial land	VOCs (EPA method 8021 or 8260B, as appropriate and combined with collection by EPA Method 5035), semi-VOCs (EPA method 8270C), TPH (modified EPA method 8015), PCBs (EPA method 8082 or 8080A), heavy metals including lead (EPA methods 6010B and 7471A), asbestos (OSHA Method ID-191)

**The recommended analyses should be performed in accordance with USEPA SW-846 methods (1996). Other possible analyses include Hexavalent Chromium: EPA method 7199*

Recommended Fill Material Sampling Schedule

Area of Individual Borrow Area	Sampling Requirements
2 acres or less	Minimum of 4 samples
2 to 4 acres	Minimum of 1 sample every 1/2 acre
4 to 10 acres	Minimum of 8 samples
Greater than 10 acres	Minimum of 8 locations with 4 subsamples per location
Volume of Borrow Area Stockpile	Samples per Volume
Up to 1,000 cubic yards	1 sample per 250 cubic yards
1,000 to 5,000 cubic yards	4 samples for first 1000 cubic yards + 1 sample per each additional 500 cubic yards
Greater than 5,000 cubic yards	12 samples for first 5,000 cubic yards + 1 sample per each additional 1,000 cubic yards

terials were used, handled or stored as part of the business operations, or unpaved parking areas where petroleum hydrocarbons could have been spilled or leaked into the soil. Undesirable commercial sites include former gasoline service stations, retail strip malls that contained dry cleaners or photographic processing facilities, paint stores, auto repair and/or painting facilities. Undesirable industrial facilities include metal processing shops, manufacturing facilities, aerospace facilities, oil refineries, waste treatment plants, etc. Alternatives to using fill from construction sites include the use of fill material obtained from a commercial supplier of fill material or from soil pits in rural or suburban areas. However, care should be taken to ensure that those materials are also uncontaminated.

Documentation and Analysis

In order to minimize the potential of introducing contaminated fill material onto a site, it is necessary

to verify through documentation that the fill source is appropriate and/or to have the fill material analyzed for potential contaminants based on the location and history of the source area. Fill documentation should include detailed information on the previous use of the land from where the fill is taken, whether an environmental site assessment was performed and its findings, and the results of any testing performed. It is recommended that any such documentation should be signed by an appropriately licensed (CA-registered) individual. If such documentation is not available or is inadequate, samples of the fill material should be chemically analyzed. Analysis of the fill material should be based on the source of the fill and knowledge of the prior land use.

Detectable amounts of compounds of concern within the fill material should be evaluated for risk in accordance with the DTSC Preliminary Endangerment Assessment (PEA) Guidance Manual. If

metal analyses are performed, only those metals (CAM 17 / Title 22) to which risk levels have been assigned need to be evaluated. At present, the DTSC is working to establish California Screening Levels (CSL) to determine whether some compounds of concern pose a risk. Until such time as these CSL values are established, DTSC recommends that the DTSC PEA Guidance Manual or an equivalent process be referenced. This guidance may include the Regional Water Quality Control Board's (RWQCB) guidelines for reuse of non-hazardous petroleum hydrocarbon contaminated soil as applied to Total Petroleum Hydrocarbons (TPH) only. The RWQCB guidelines should not be used for volatile organic compounds (VOCs) or semi-volatile organic compounds (SVOCS). In addition, a standard laboratory data package, including a summary of the QA/QC (Quality Assurance/Quality Control) sample results should also accompany all analytical reports.

When possible, representative samples should be collected at the borrow area while the potential fill material is still in place, and analyzed prior to removal from the borrow area. In addition to performing the appropriate analyses of the fill material, an appropriate number of samples should also be determined based on the approximate volume or area of soil to be used as fill material. The table above can be used as a guide to determine the number of samples needed to adequately characterize the fill material when sampled at the borrow site.

Alternative Sampling

A Phase I or PEA may be conducted prior to sampling to determine whether the borrow area may have been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with DTSC or appropriate regulatory agency. However, if it is not possible to analyze the fill material at the borrow area or determine that it is appropriate for use via a Phase I or PEA, it is recommended that one (1) sample per truckload be collected and analyzed for all com-

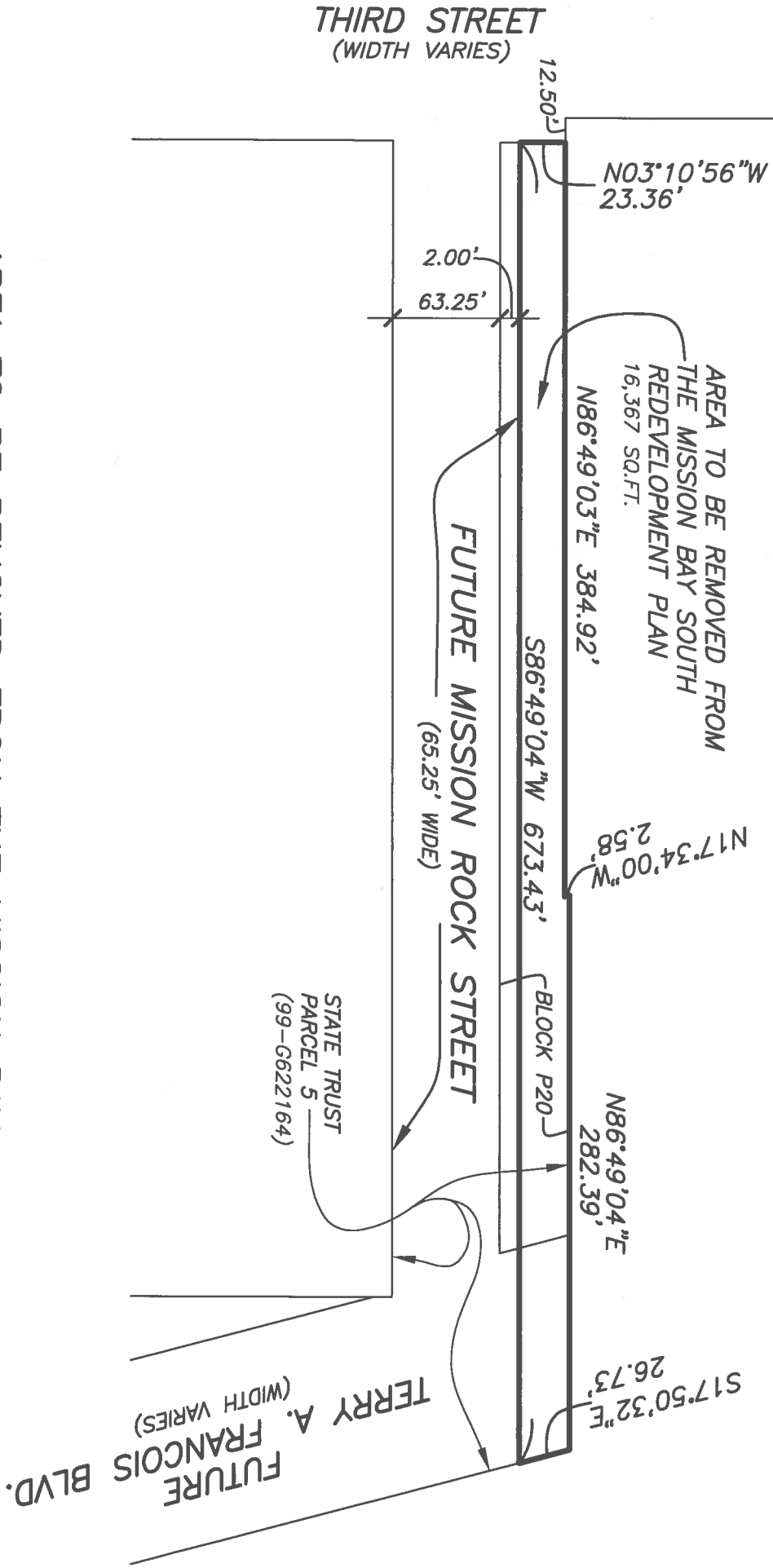
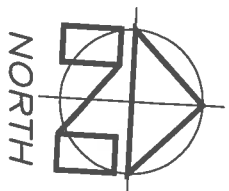
pounds of concern to ensure that the imported soil is uncontaminated and acceptable. (See chart on Potential Contaminants Based on the Fill Source Area for appropriate analyses). This sampling frequency may be modified upon consultation with the DTSC or appropriate regulatory agency if all of the fill material is derived from a common borrow area. However, fill material that is not characterized at the borrow area will need to be stockpiled either on or off-site until the analyses have been completed. In addition, should contaminants exceeding acceptance criteria be identified in the stockpiled fill material, that material will be deemed unacceptable and new fill material will need to be obtained, sampled and analyzed. Therefore, the DTSC recommends that all sampling and analyses should be completed prior to delivery to the site to ensure the soil is free of contamination, and to eliminate unnecessary transportation charges for unacceptable fill material.

Composite sampling for fill material characterization may or may not be appropriate, depending on quality and homogeneity of source/borrow area, and compounds of concern. Compositing samples for volatile and semivolatile constituents is not acceptable. Composite sampling for heavy metals, pesticides, herbicides or PAH's from unanalyzed stockpiled soil is also unacceptable, unless it is stockpiled at the borrow area and originates from the same source area. In addition, if samples are composited, they should be from the same soil layer, and not from different soil layers.

When very large volumes of fill material are anticipated, or when larger areas are being considered as borrow areas, the DTSC recommends that a Phase I or PEA be conducted on the area to ensure that the borrow area has not been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with the DTSC.

For further information, call Richard Coffman, Ph.D., R.G., at (818) 551-2175.

ATTACHMENT 5
EXCERPT: MISSION BAY RISK MANAGEMENT PLAN
APPLICABLE TO SOUTHERN SITE BOUNDARY ONLY



AREA TO BE REMOVED FROM THE MISSION BAY
SOUTH REDEVELOPMENT PLAN

BY JP CHKD. BR DATE 9/8/17 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229-MASTER LEASE
PROPERTY PLATS.dwg

**RISK MANAGEMENT PLAN
MISSION BAY AREA
SAN FRANCISCO, CALIFORNIA**

Submitted to:

California Regional Water Quality Control Board
San Francisco Bay Region

California Environmental Protection Agency
Department of Toxic Substances Control

Prepared by:

ENVIRON Corporation
Emeryville, CA

May 11, 1999
03-6381S

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GLOSSARY

ABAG	Association of Bay Area Governments
Agency	San Francisco Redevelopment Agency
BMP	Best Management Practices
BTEX	benzene, toluene, ethylbenzene and xylenes
Cal/EPA	California Environmental Protection Agency
City	City and County of San Francisco
DataRAM	Real-time dust monitoring instrument
Development	defined in Section 1.0
DTSC	Department of Toxic Substances Control
EHASP	Environmental Health and Safety Plan
Fill	defined in Section 4.3.5.5
Free Product	defined in Section 4.4
FSEIR	Final Subsequent Environmental Impact Report
General Permit	General Permit for discharge of stormwater from construction sites per SWRCB Order No. 92-08 DWQ, discussed in Section 4.3.3
HI	Hazard Index
ITL	Interim Target Level; defined in Section 3.1
Inorganics	Metals (identified in Appendix A), Asbestos, Fluoride and Sulfide
Interim Period	defined in Section 3.1
IRRM	Interim Risk Management Measures
Native Soils	defined in Section 1.0
NPDES	National Pollutant Discharge Elimination System
OVA	Organic Vapor Analyzer
OVN	Organic Vapor Meter
Owner	defined in Section 1.0
PAH	Polycyclic Aromatic Hydrocarbons
PCBs	Polychlorinated Biphenyls
PEL	Permissible Exposure Limit; defined in Section 4.3.8.2
PM ₁₀	Particulate Matter with aerodynamic diameter less than 10 microns
PPE	Personal Protective Equipment; defined in Section 4.3.8.2
Redevelopment Plans	defined in Section 1.0
RMP	Risk Management Plan
RMP Area	defined in Section 1.0
RWQCB	Regional Water Quality Control Board for the San Francisco Bay Region
SSTL	Site Specific Target Level; defined in Section 4.3.5.5.1
SVOC	Semivolatile organic compounds
SFDPH	San Francisco Department of Public Health
SFDPW	San Francisco Department of Public Works
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TPH-d	Total Petroleum Hydrocarbons, in the diesel range
TPH-g	Total Petroleum Hydrocarbons, in the gasoline range
TPH-mo	Total Petroleum Hydrocarbons, in the motor oil range

GLOSSARY (Continued)

UCL	Upper confidence limit
UCSF	University of California, San Francisco
USEPA	United States Environmental Protection Agency
UST	Underground Storage Tank
VOC	Volatile Organic Compound

3.0 RISK MANAGEMENT MEASURES PRIOR TO DEVELOPMENT

3.1 Introduction

The purpose of the following section is to describe the interim risk management measures (IRMM) that will be implemented to minimize potential impacts associated with the exposed Native Soils that may exist on parcels within the RMP Area during the Interim Period, which is defined for each parcel as the period of time between: (i) the date that the RMP is approved and the Environmental Covenant is recorded against the parcel and; (ii) the commencement of development of that parcel. These management measures apply to all parcels within the RMP Area before development of the parcel commences; the IRMMs are developed to be protective of populations on both the undeveloped parcel and on developed parcels that may be located directly adjacent to areas that have not been developed and therefore may contain exposed Native Soils. The IRMMs are based, in part, on an analysis of the potential human health risks posed by the exposed Native Soils that exist on parcels within the RMP Area. The human health risk evaluation was conducted by developing chemical-specific interim target levels (ITLs) that will be protective of the human populations that could be exposed to the uncovered soils based on projected future uses, prior to commencement of development (ENVIRON 1999). A comparison of the concentrations of chemicals detected in soils to the health-based ITLs provided the basis for identifying areas where interim risk management measures are appropriate, and the foundation for developing an overall site-wide interim plan that will manage existing conditions in the RMP Area until development throughout the RMP Area is complete. Implementation of the IRMMs outlined in this section will reduce the potential human health impacts posed by exposed Native Soils prior to development, and will simultaneously fulfill other long-term property management objectives. Risk management measures outlined here are protective of human health and the environment during the respective Interim Periods for each parcel. The risk management measures that will be implemented to lessen impacts associated with the actual construction and development of parcels within the RMP Area (e.g., impacts associated with dust

generated during construction), including the soil management procedures and the measures to protect the construction workers involved in the buildout of the RMP Area, are discussed in Section 4.0.

3.2 Risk Management Measures to be Implemented on Parcels Prior to Commencement of Development

The risk management objective for the Interim Period is to protect current and future populations from the potential impacts associated with exposed Native Soils that exist on various parcels throughout the RMP Area. To achieve this objective, risk-based evaluations were conducted to determine whether exposure to Native Soils present on parcels within the RMP Area could pose a risk to populations who could be present in the RMP Area throughout the period of development. Health-based ITLs were calculated for each of the chemicals present in the exposed Native Soils using standard United States Environmental Protection Agency (USEPA) and Department of Toxic Substance Control (DTSC) risk assessment protocols. The ITLs were developed by assuming that human populations in the area could be exposed to the Native Soils through the inhalation of fugitive dusts, soil ingestion, and dermal contact exposure pathways for an extended 25- to 30- year period.

The results of the risk-based evaluations indicated that exposure to the chemicals present in the Native Soils through the inhalation of fugitive dusts generated from natural wind erosion will not adversely impact the health of either current or future populations who may be present in or adjacent to the RMP Area. In addition, mean chemical concentrations in surface soil (estimated by calculating the 95 percent upper confidence limit (UCL) of the arithmetic mean) were below the ITLs developed under assumptions of long-term (i.e., 25 to 30 years) direct contact pathways (i.e., soil ingestion and dermal contact). However, several individual locations within the RMP Area contain chemicals (primarily metals) that exceed the health-based ITLs. The health-based ITLs (Tables B-1 through B-3), a comparison of the lowest of the ITLs to concentrations detected within the RMP Area (Table B-4), and a figure indicating the specific locations where levels of chemicals exceed the health-based ITLs (Figure B-1), are presented in Appendix B.

Although a review of the average concentrations of chemicals in surface soils indicates that even long-term (i.e., 25 to 30 year) direct contact with exposed Native Soil would not be

expected to adversely impact human health, any form of risk management that minimizes long-term direct contact with the Native Soils will be effective in minimizing potential risks associated with long-term direct contact with the soils and will be protective of all individuals that may be present in the RMP Area throughout the Interim Period. Risk management measures which will restrict unauthorized access to the exposed Native Soils will minimize the potential for long-term direct contact, and will provide additional benefits such as limiting the unauthorized use of the RMP Area by trespassers, reducing the potential for unauthorized dumping, and improving the overall aesthetic quality of the area. Given the multiple benefits gained from controlling access, the following IRMMs will be implemented by Owners or their designees:

- i) Install Fencing and Gates to Restrict Unauthorized Access to Exposed Native Soils. Fencing and gates will be installed on all parcels that contain areas of exposed Native Soils, as depicted in Figure B-2. The fences will be chain link or equivalent fences that are a minimum of 6 feet in height. The fences will be of sufficient integrity such that they can withstand adverse weather conditions (e.g., heavy rains or winds). As indicated in Figure B-2, the portions of the RMP Area that are not fenced include: i) areas that are covered by asphalt, concrete, or buildings; or ii) railroad right-of-ways which are covered with a minimum of one-foot of ballast (aggregate). The installation of fencing will restrict unauthorized access to vacant parcels with exposed Native Soil. Fencing will also limit the potential for vehicles to travel on unauthorized areas and generate dusts. In addition to the installation of fencing, “No Trespassing” signs will be posted every 250 feet to inform individuals that access to the fenced areas is illegal. Fencing will remain until the areas of exposed Native Soils are covered or until development of a parcel commences, at which time the management measures governing the development of a parcel (described in Section 4.0) must be followed. It is the responsibility of the Owner or Lessee of each parcel (or the Owner or Lessee’s delegate) to maintain fencing.

- ii) Install Fencing on Parcels that Become Vacant During the Interim Period. Any parcels where demolition or other activities will result in the uncovering of soils during the Interim Period shall be fenced within three working days after demolition so that access to any exposed Native Soils on the parcels is restricted. As described above, fencing will be maintained until development of the parcel commences or the parcel is paved or otherwise covered.

- iii. Regulatory Approval Required for Specified Interim Uses. As described in the Redevelopment Plans, there will from time to time be additional industrial/commercial uses which may occur in areas with exposed Native Soils within the RMP Area prior to the time “development”, as defined in Section 1.0, occurs. A comparison of the maximum concentrations detected in the surface soils to the ITLs developed for the commercial/industrial scenario indicates that only substantial daily contact with exposed Native Soils occurring for more than two and one-half years would potentially be of concern and would warrant any form of further evaluation or regulatory approval¹. New interim leases, which would permit substantial contact with exposed Native Soils for more than two and one-half years are not permitted, absent written approval of the RWQCB. The phrase “substantial contact with exposed Native Soils” would include any enterprise whose primary area of activity was located over or in the exposed Native Soils. An example of a new interim lease that would require RWQCB approval would include a parking lot operation located on exposed Native Soils where employees could potentially be continuously exposed to such Native Soils for more than 2.5 years. Examples of contact with exposed Native Soils which are not substantial in nature are businesses whose route of egress and ingress involve driving or walking across such Native Soils or involves employee parking on such Native Soils.

¹ The threshold exposure period of two and one half years was determined by adjusting the commercial worker ITLs to account for worker exposures that might occur for periods of less than the assumed 25 years. Commercial worker ITLs developed

- iv) Notification of Tenants. All Lessees and other tenants in the RMP Area will be notified by the Owner that the existing cover (asphalt, concrete, vegetation) is to remain intact. Lessees and tenants will be informed of the need to adopt certain health and safety measures, described in Section 4.0 of this RMP, if such measures are necessary.
- v) Conduct All Subsurface Repair Work in Compliance with the Worker Health and Safety Guidelines. All subsurface repair work where workers will come into direct contact with Native Soils, such as the repair of an existing utility or sewer line, will be conducted in compliance with the relevant health and safety guidelines, as described in Section 4.0.
- vi) Conduct Periodic Monitoring. In order to verify that the risk management measures that are implemented remain effective in restricting unauthorized access to exposed Native Soils during development of the RMP Area, the RMP Area will be inspected on a quarterly basis by the respective property Owners (or designees). The inspections will be conducted to verify that the access restriction measures are in place, and will identify areas where temporary fencing might need to be reinstalled. Additionally, the monitoring will include inspections of the asphalt-covered areas to verify that breaches in the existing cover have not occurred. A breach in the cover is a condition in which prolonged direct contact with Native Soils could occur. If the inspections identify areas where the fencing has been removed, or the existing cover has been breached, then one of the following response actions will be implemented as soon as reasonably practicable: 1) restore the fencing or install new fencing; or 2) repair the cover. Owners shall submit copies of the quarterly inspection reports to the RWQCB and the SFDPH by January 31 of each year on an annual basis. A Reporting Checklist

assuming daily direct contact with soils for 2.5 years (as opposed to the default assumption of 25 years) are less than the maximum concentrations detected in the surface soil across the RMP Area.

is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample inspection sheet, which contains the minimum items that are to be inspected during the monitoring program, is also provided in Appendix C.

- vii) Existing Soil Stockpiles: Management of soil stockpiles that exist within the RMP Area prior to the commencement of development, will occur in accordance with the soil stockpile procedures delineated in Section 4.3.5.2.

Implementation of these IRMMs will control access to exposed Native Soils that exist within the RMP Area and may exist throughout the Interim Period, and will protect the health of individuals who may be present during the phased development and occupancy of the RMP Area. This Section 3.0 is not intended to and does not set forth all environmental requirements unrelated to hazardous materials which might apply to the RMP Area prior to development, such as general dust control requirements. Any such applicable requirements will continue to apply independent of the RMP.

4.0 RISK MANAGEMENT MEASURES DURING DEVELOPMENT

4.1 Introduction

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to control potential impacts to human health and the environment associated with exposure to constituents present in the soil and ground water that could result from the construction activities and development of the RMP Area. The risk management measures were developed following the identification and analysis of each potential impact; implementation of these management measures will protect human health, including on-site construction workers, nearby residents and workers, and the environment from potential impacts that may arise during the construction and development of the RMP Area. As described below in Section 4.3.11, additional sampling may be required on individual development parcels in order to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Depending on the results obtained during any additional sampling, supplemental management measures, in addition to the management measures identified below, may be required on a parcel-by-parcel basis.

Section 4.2 identifies the potential activities associated with the construction and development of the RMP Area that could impact human health and the ecological environment. The risk management measures that will be implemented during development within the RMP Area are described in Section 4.3. Section 4.4 describes measures to be implemented in the Free Product Area in addition to those described in Section 4.3.

4.2 Identification of Development Activities that Could Impact Human Health and/or the Ecological Environment

Development activities in the RMP Area are likely to include various site preparation activities, such as but not limited to excavation, stockpiling, trenching, grading, backfilling and dewatering that will disturb the Native Soils and ground water within the RMP Area.

Based on the types of constituents detected in the Native Soils and ground water (discussed in Section 2.0), the potential events or activities associated with the development of the RMP Area that could result in potential impacts on human health and/or the ecological environment without implementation of appropriate risk management measures are listed below.

- Dust generation associated with soil excavation and trenching, grading and loading activities, backfilling, movement of construction and transportation equipment, and fugitive dust generation from winds traversing an exposed soil stockpile;
- Off-site transport of soils as sediments through surface water run-off from exposed soil stockpiles and graded areas;
- The inadvertent creation of horizontal conduits from utility trenches resulting in preferential pathways for ground water flow within the RMP Area;
- Management/movement of soils during construction;
- Identification of unknown subsurface structures and unknown areas of contamination;
- Unauthorized access to site during construction; and
- Dewatering activities.

The risk management measures that will control potential impacts associated with each of the events or activities listed above are described in the following section. Management measures that will be implemented to control potential impacts on the construction worker, contractors and short-term intrusive workers who may be engaged in limited excavation activities such as utility repair, are also described below.

4.3 Risk Management Measures to be Implemented During Development Activities

The following subsections identify the risk management measures that will be implemented to reduce potential impacts from the development of the RMP Area and describe the compliance monitoring that will be implemented during development. The risk management measures described below are applicable to all locations within the RMP Area. Additional management measures that will be implemented during development within the Free Product Area are described in Section 4.4.

4.3.1 Dust Control

Contractors will implement the following dust control measures during development activities in order to minimize and control the generation of dust. Effective dust control will reduce potential

impacts on construction workers, and will simultaneously control nuisance dust and dust containing chemicals from migrating outside of the development area to surrounding populations. Dust control measures will minimize dust that may be generated from excavation and trenching activities, grading, the loading of trucks, truck traffic, and soil stockpiles. The dust control measures described below apply to soil stockpiles that are in place for less than a 30-day period (referred to as construction stockpiles). Management measures specific to stockpiles that are stored for more than 30 days are identified in Section 4.3.5.2.

Prior to the initiation of development on a given parcel, the Owner, Lessee, or their designee (most likely a contractor) will submit to SFDPH and to the RWQCB written notification indicating whether the proposed development is of the type that will require dust monitoring, as described in Section 4.3.2.

4.3.1.1 Specific Dust Control Measures

The dust control measures that will be implemented at all construction sites within the RMP Area are identified below. The dust control measures identified below correspond to the PM₁₀ control measures recommended by the Bay Area Air Quality Management District (BAAQMD) in their California Environmental Quality Act Guidelines. The BAAQMD dust control guidelines are to be implemented during construction activities regardless of whether chemicals are present in the soil. Some of the dust control measures recommended by the BAAQMD, as described below, are similar to the measures that will be implemented to control off-site runoff, described in Section 4.3.3. Where management measures specified to control dust are different from those specified to control off-site runoff, the more stringent of the measures will apply.

The following dust control measures will be implemented at construction sites of all sizes:

- Water all active construction areas at least twice a day or as necessary to prevent visible dust plumes from migrating outside of the parcel under development.

- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed construction stockpiles. Management measures for stockpiles stored for more than 30 days are described under Section 4.3.5.2.
- Mist or spray water while loading transportation vehicles.
- Minimize drop heights while loading transportation vehicles.
- Use tarpaulins or other effective covers for trucks carrying soils that travel on streets.
- Pave, apply water three times per day, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily all paved access routes, parking areas and staging areas.
- Sweep street daily if visible soil material is carried onto public streets.

If construction sites are greater than four acres in size, then the following additional dust control measures will be implemented:

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Limit traffic speeds on unpaved roads to 15 miles per hour (mph).
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways (discussed further under the control of off-site runoff, Section 4.3.3).
- Replant vegetation in disturbed areas as quickly as possible.

The following additional optional dust control measures may be implemented by the contractor, as necessary, particularly if windy conditions persist before the area being developed is covered. A determination as to whether optional dust control measures should be implemented will be made by the contractor on a case-by-case basis based, in part, on the results of the Dust Plan outlined in 4.3.2. Additional control measures that could be implemented to reduce dust may include:

- Installing wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Installing wind breakers, or plant trees/vegetative wind breakers at windward sides(s) of construction areas.
- Suspending excavation and grading activities when winds (instantaneous gusts) exceed 25 mph.
- Limiting the area subject to excavation, grading and other construction activities at any one time.

4.3.1.2 Documentation of Dust Control Measures

Contractors will keep daily logs of all dust control measures that are implemented throughout the course of the day. Logs will be kept on file for three months following the completion of the activities that triggered implementation of the dust control measures.

4.3.2 Dust Plan

In conjunction with the dust control measures identified above, the Owner or Lessee, (or some other entity, such as a contractor, designated or certified by the Owner or Lessee), will follow this dust plan (the “Plan”) during construction activities to demonstrate that the health and safety of all off-site populations (where off-site refers to areas outside of the construction zone) is not being adversely impacted by the construction/development activities based on the chemicals that could be attached to the dusts. Potential exposures to the onsite construction worker are discussed in Section 4.3.8. If the Plan described in the following sections is implemented, then additional regulatory approvals will not be required.

A screening-level risk analysis was conducted to determine the potential impacts associated with unmitigated dusts generated during construction activities (ENVIRON 1998b). Based on the results of the risk analysis, it was concluded that as long as the annual average respirable dust levels at off-site receptor locations remained below $250 \mu\text{g}/\text{m}^3$, exposure to the chemicals that may be attached to the dusts will not adversely impact human health. This analysis assumed that exposure to the dusts will occur continuously for 20 years. Accordingly, the Plan has been devised to verify that the long-term average off-site dust levels to which

individuals could be exposed during the course of the 20-year development are at or below the 250 $\mu\text{g}/\text{m}^3$ target level.

The Plan is comprised of two parts. The first part identifies those conditions where real-time dust monitoring is not required. The exclusion of certain sites from the dust monitoring requirements was based on a conservative screening-level analysis. Those sites where it was concluded that off-site annual average concentrations would not exceed 250 $\mu\text{g}/\text{m}^3$ were identified, and will be exempt from the dust monitoring requirements. The second part of the Plan presents a real-time dust monitoring program (the "Program"). An Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can implement the following procedures or can choose to prepare its own monitoring program, as long as it has, at a minimum, the elements of the Program described in Part II below. In the sections below, 'Site' is defined as the area on which the development by that contractor is occurring. 'Dust-generating activity' is defined to be the activity for which dust monitoring may be necessary, and includes grading, excavation, trenching, soil stockpiling, backfilling, the handling and movement of Native Soils, or vehicular traffic on an unpaved surface.

4.3.2.1 Part I: Sites Excluded from Dust Monitoring Program

Implementation of a dust monitoring program will not be necessary if it can be shown that the off-site annual average concentration will not exceed 250 $\mu\text{g}/\text{m}^3$. Listed below are situations for which PM_{10} (i.e., particulate matter with aerodynamic diameter less than 10 microns in diameter) concentrations will not exceed an annual average concentration of 250 $\mu\text{g}/\text{m}^3$, even assuming the dust control measures identified in Section 4.3.1 have not been implemented. The following examples are not intended as a comprehensive list; if an Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can demonstrate to the RWQCB other conditions satisfying the 250 $\mu\text{g}/\text{m}^3$ threshold, a monitoring program will not be required. Note that even if a monitoring program is not required, the dust control measures discussed in Section 4.3.1 are still required.

- Potentially exposed populations are not closer than the distances shown in Figure 4. Worst-case annual average concentrations were modeled using USEPA's SCREEN3 air dispersion model to determine the distance at which ambient concentrations will be below an annual average of 250 $\mu\text{g}/\text{m}^3$. Modeling was performed for an area source using an uncontrolled emission rate of 51 lb/acre/day (used in the Mission Bay Final Subsequent Environmental Impact Report (FSEIR) as the estimate of emissions from construction sites) and worst-case meteorological conditions.

Figure 4 presents the relationship between the size of the Site (determined by either the length or width of the Site, whichever is greater) and the distance at which the annual average concentration will be below 250 $\mu\text{g}/\text{m}^3$, and identifies those combinations where dust monitoring will not be required. Conditions that fall above the line in Figure 4 would not require any dust monitoring, whereas conditions below the line would require implementation of the dust monitoring program described below. As an example, if the length of the Site (widest or longest dimension) is 440 feet, dust monitoring would need to be conducted if receptors (i.e., off-site workers or residents) are located within 100 feet of the Site.

- Repair or maintenance of underground utility lines. In contrast to large grading projects, underground utility maintenance or repair projects are typically relatively narrow in depth and width would thus not normally provide a significant source area for dust to be generated and sustained. A dust monitoring program will not be implemented during underground utility maintenance or repair work.
- Dust-generating activities that occur for less than four weeks. The analysis from which the acceptable dust concentration was derived assumes that the exposure would occur continuously for 20 years. A four-week project represents less than 0.4 percent of this total assumed 20-year exposure period. Since it is unlikely that dust-generating activities

occurring for a period of less than four weeks will contribute significantly to an individual's total dust exposure during construction activities in the RMP Area, dust generating activities that occur for less than four weeks will not require any dust monitoring.

4.3.2.2 Part II: Dust Monitoring Program

The objective of the Dust Monitoring Program (the "Program") is to collect data that is reflective of the levels of dusts generated during construction activities so that additional dust suppression measures can be implemented, if necessary, to reduce potential impacts to nearby populations. The Program will consist of real-time monitoring for PM_{10} concentrations, as discussed in the following sections. Except as exempted in Section 4.3.2.1 above, the Program must be implemented during the period when development of the Site will involve dust-generating activities. However, once the development of a Site reaches a point that dust-generating activities are no longer occurring, dust monitoring will not be necessary. Compliance with the Program will be the responsibility of the Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee). Construction personnel will be periodically briefed in the field about the substance of the Program and will inform the construction supervisor if the dust levels exceed the criteria.

4.3.2.2.1 Monitoring Equipment

Monitoring will be performed for PM_{10} using a portable real-time dust monitor, such as a DataRAM or equivalent instrument. The monitor will have a minimum detection limit of no more than $100 \mu\text{g}/\text{m}^3$, a minimum accuracy of $1 \mu\text{g}/\text{m}^3$ or 1 percent, and should be calibrated to greater than $250 \mu\text{g}/\text{m}^3$. Calibration of the monitor will be based on the manufacturer's specifications.

4.3.2.2.2 Sampling Frequency

There are two options available for sampling frequency that meet the objectives of the Program. For Option One, sampling will occur during the first two days of a new operation involving dust-generating activities, as well as every day that a new dust-

generating activity occurs on the Site. Samples will be collected once per hour, for a duration of 10-15 minutes, by a site walker carrying the dust monitor. If the concentrations on-site never exceed $250 \mu\text{g}/\text{m}^3$ during these first two days, sampling will occur one day per week for the remainder of the dust-generating activity, unless the 10-minute average concentration exceeds $250 \mu\text{g}/\text{m}^3$ during one of the once-a-week sampling events. If the 10-minute average concentration exceeds $250 \mu\text{g}/\text{m}^3$ during one of the once-a-week sampling events, then sampling must occur daily or until two successive day sampling events occur with no exceedance of the $250 \mu\text{g}/\text{m}^3$ threshold.

For Option Two, sampling will occur continuously during any dust-generating activity. The dust monitor will be set up in one location, as discussed below. The monitor will be checked four times during the course of the day to ensure that concentrations are not exceeding an average of $250 \mu\text{g}/\text{m}^3$.

4.3.2.2.3 Sampling Locations

Samples will be collected as close to the center of the dust-generating activity as possible. In this way, samples will represent worst-case levels of dust to which the nearby populations could be exposed. Samples typically should be collected from an approximate height of five feet above the ground surface.

If sampling is occurring with a site walker (Option One), the walker should start as close to the dust-generating activity as possible. If the concentrations are approaching $250 \mu\text{g}/\text{m}^3$, the walker should move towards the downwind Site boundary and continue to take measurements without interfering with the construction activities. Factors that will be taken into account when selecting the walker's route and destination will include the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. A demonstration that the levels within or directly downwind of the dust-generating activities are below $250 \mu\text{g}/\text{m}^3$ is sufficient documentation that levels off-site are well below the threshold.

If sampling is occurring through the use of continuous monitoring (Option Two), the monitor should be stationed as close to the dust-generating activity as possible without interfering in the activity. When the monitor needs to be stationed at the edge of the dust-generating activity due to the nature of the dust-generating activity, the monitor

should be placed on the downwind side of the Site. Unless site-specific data to the contrary is available, downwind will be to the east-southeast of the dust generating activity (consistent with the information used in FSEIR). As with Option One, other factors should also be taken into account when locating the monitor, including the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. It should be noted that during the course of the day, it may be necessary to relocate the dust monitor as any of these Site conditions change. A demonstration that the levels within or directly downwind of the dust-generating activities are below $250 \mu\text{g}/\text{m}^3$ is sufficient documentation that levels off-site are well below the threshold.

4.3.2.2.4 Recording of Quantitative Measurements

All PM_{10} data should be logged with a data recorder, downloaded from the DataRAM or equivalent instrument, and attached to the field logbook. Notes regarding the location of the monitors, the dust generating activities, and the nearby populations should also be recorded in the field logbook. In addition, any recommended mitigation and follow-up measurements will also be recorded.

4.3.2.2.5 Sampling Personnel

The sampling personnel should be selected at the initiation of the project, along with a backup person, in case the first person is absent. The individual conducting the sampling should be an individual experienced with the operation and handling of the sampling equipment to be used.

4.3.2.2.6 Criteria for Emissions Mitigation Activities

If the on-site, day-long average concentrations exceed $250 \mu\text{g}/\text{m}^3$, additional dust suppression measures as discussed in Section 4.3.1 shall be implemented for the next day, assuming the dust-generating activity continues to occur. Furthermore, additional dust suppression measures should be implemented if visible dust plumes are seen crossing the site boundary, regardless of the measured PM_{10} concentrations.

4.3.2.2.7 Reporting Requirements

If the on-site, day long average concentrations exceed $250 \mu\text{g}/\text{m}^3$, the RWQCB and the SFDPH will be notified by telephone as soon as practicable. A brief letter report describing the exceedance, and the response undertaken by the contractor to achieve compliance will be submitted to the RWQCB and the SFDPH within 5 business days after the exceedance.

4.3.3 Control of Off-Site Runoff

To minimize risks associated with storm water runoff during construction, Storm Water Pollution Prevention Plans (SWPPP) that meet the objectives of the San Francisco RWQCB will be developed by the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) which undertakes construction activities in the RMP Area. Preparation and implementation of a SWPPP is required regardless of whether any chemicals are present in the soil. A primary goal of the SWPPP is to reduce or eliminate off-site discharge of sediments and other pollutants during construction activities. If these procedures are implemented, then potential releases of chemicals in the soils will also be controlled. The SWPPPs will be prepared in accordance with SWRCB Order No. 92-08 DWQ (the "General Permit") and guidelines contained in the following documents: *"Information on Erosion and Sediment Controls for construction Projects: A Guidebook (RWQCB 1998a)* or later edition; and *"Erosion and Sediment Control Field Manual"* second or later edition (RWQCB, 1998b), or succeeding regulatory guidance documents. The provisions of the General Permit require the implementation of Best Management Practices ("BMPs") to control and abate the discharge of sediments, the monitoring of the BMPs to verify their effectiveness in controlling discharges, and revising the BMPs, if necessary.

For the RMP Area, the SWPPP development will be divided into two sequential phases: 1) the development of a "Conceptual SWPPP" that covers the entire Mission Bay RMP Area; and 2) the development of site-specific SWPPPs prepared for each applicable individual construction project. A brief description of each of the two phases is provided below.

Phase 1: Conceptual SWPPP for Mission Bay RMP Area

The Conceptual SWPPP prepared for the entire RMP Area is to be submitted to the RWQCB within 120 days after approval of the RMP. The general process for preparing the Conceptual SWPPP is described in Chart I-1 of Appendix I. As indicated in Chart I-1, the Conceptual SWPPP will consider the proposed outline presented in Table I-1 (in Appendix I), and will include those general elements that are practicable to include during the conceptual phase and that are not dependent on the specific details of the construction activities which will not be known until later. The Conceptual SWPPP will also address the pollution prevention measures for dry and wet months from construction related activities.

The initial step in the development of the Conceptual SWPPP is to define the organizational structure for the site-specific SWPPPs' Pollution Prevention Teams (PPTs) that will be responsible for preparing, implementing, and monitoring compliance with each of the site-specific SWPPPs. The Conceptual SWPPP will identify the essential roles of these PPTs and will describe the responsibilities each team will have in implementing, monitoring and enforcing its own site-specific SWPPP. Additionally, the training requirements for the members of each site-specific SWPPPs' PPT will be described in the Conceptual SWPPP.

Phase 2: Site-Specific SWPPPs

Following development of the Conceptual SWPPP, site-specific SWPPPs will be prepared as individual parcels in the RMP Area are developed. The overall process for preparing the site-specific SWPPP is described in Chart I-2 of Appendix I. The site-specific SWPPP will follow the proposed outline in Table I-1. A site-specific SWPPP must be developed by the Owner or the Lessee which undertakes the construction activities (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) for each construction project in the RMP Area greater than one acre in size, if the construction activities will involve soil disturbance as defined in 40 CFR Parts 122-124 and State Water Resources Control Board (SWRCB) Order 92-08 DWQ. As indicated in Chart I-2, the site-specific SWPPPs will largely follow the Conceptual SWPPP, but will include additional site-specific pollution prevention procedures and specific inspection, monitoring and record keeping procedures for the given construction activities at that particular development area. Site inspections, to determine the effectiveness of the BMPs and identify repair needs, will be conducted routinely during the dry months and more frequently during the wet months. In conformance with the Conceptual

SWPPP, the site-specific SWPPP will identify the name, organization and phone numbers of the Pollution Prevention Team members who are responsible for preparing, implementing, monitoring compliance, enforcing, and revising the site-specific SWPPP, if necessary. The site-specific SWPPP will include requirements that those with inspection responsibilities are qualified and/or trained in the field of erosion and sediment control practices and are familiar with the storm water pollution control rules and regulations.

Compliance with the site-specific SWPPP is the responsibility of the Owner or the Lessee which undertakes the construction activities (or other entity, such as a contractor who is knowledgeable in erosion and sediment control, designated or certified by the Owner or Lessee).

The SWPPPs will identify, at a minimum, the following BMPs², or substantially equivalent measures as described in detail in the above references (ABAG 1995 and RWQCB 1998b).

- Minimize dust during demolition, grading, and construction by lightly spraying exposed soil on a regular basis.
- Minimize wind and water erosion on temporary soil stockpiles by spraying with water during dry weather and covering with plastic sheeting or other similar material during the rainy season (October through April).
- Minimize the area and length of time during which the site is cleared and graded.
- Prevent the release of construction pollutants such as cement, mortar, paints, solvents, fuel and lubricating oils, pesticides, and herbicides by storing such materials in a bermed, or otherwise secured area.
- As needed, install filter fences around the perimeter of the construction site to prevent off-site sediment discharge. Prior to grading the bank slopes of China Basin Channel for the proposed channel-edge treatments, install silt or filter fences to slow water and remove sediment. As needed, properly trench and anchor the silt or filter fences so that they stand up to the forces of tidal fluctuation and wave action and do not allow sediment-laden water to escape underneath them.

² These nine BMPs are requirements set forth in the FSEIR.

- Follow design and construction standards found in *The Manual of Standards for Erosion and Sediment Control Measures* (ABAG 1995) for the placement of riprap and stone size.
- Install and maintain sediment and oil and grease traps in local stormwater intakes during the construction period, or otherwise properly control oil and grease discharges.
- Clean wheels and cover loads of trucks carrying excavated soils before they leave the construction site.
- Implement a hazardous material spill prevention, control, and cleanup program for the construction period. As needed, the program would include measures such as constructing swales and barriers that would direct any potential spills away from the Channel and the Bay and into containment basins to prevent the movement of any materials from the construction site into water.

Additional BMPs that may be included in the SWPPPs include the following:

- Stabilize all banks during rainy months using Interim or Permanent BMPs (e.g., an erosion control blanket).
- All construction entrances and exit points will be stabilized per RWQCB Erosion Control Field Manual to minimize tracking of mud outside the parcel boundaries.

4.3.4 Methods to Minimize the Potential for Creating Conduits

Utility trenches will be constructed within the RMP Area for the installation of underground utilities along alignments in the streets and on individual parcels. The trench depths could vary from approximately two to ten feet below ground surface (bgs). In general, the depth to ground water in the RMP Area is between two to ten feet bgs. If the trenches extend into the ground water, then the presence of such trenches could create a horizontal conduit for ground water flow and migration of chemicals. The management measures that will be implemented to minimize the potential for creating horizontal conduits include the following:

- Material that is less permeable than the surrounding soil will be placed through a variety of methods at 300-foot intervals and at the RMP Area boundaries along the trench to disrupt the flow within the trench backfill. One method during initial trench backfilling is the construction of a short section backfilled with a concrete or cement and bentonite mixture. Another method is the creation of a clay plug by compacting clay around the pipe for about a five-foot section of trench. A third method is the installation of barrier collars around the pipes by forming and pouring concrete in place. The appropriate method will be determined by a qualified environmental professional.

The ground water monitoring data collected to date have identified only one “plume” area (i.e., the Free Product Area) where the preferential ground water flow through the trenches could result in the migration of chemicals to nonimpacted areas. Nevertheless, to assure control of chemicals by way of preferential horizontal ground water flow, one or more of the management measures identified above will be incorporated by the contractor as standard trench construction protocol wherever the trenches in the RMP Area extend below the surface of the ground water, unless a qualified environmental professional determines that the ground water conditions do not warrant such measures.

4.3.5 Soil Management Protocols During Site Development

The following section presents the management protocols for handling, moving, stockpiling, and reusing soils during the development of the RMP Area and delineates the contingency protocols to be followed when unknown contamination or underground structures are identified.

4.3.5.1 Measures to Minimize Dust and Erosion from Soil Movement and Handling

Throughout the development of the RMP Area, soil may be handled and moved from one portion of the Project Area to another location (See Appendix D: Soil Reuse Within the Mission Bay Area). Impacts from soil movement can result from exposures to dusts generated during the soil handling and movement, and from exposures to soils that have

been transported outside of the development area either with a truck or through off-site runoff.

Potential impacts associated with the handling and movement of Native Soils will be addressed through the implementation of the dust control plan (see Section 4.3.1), and the SWPPP. The dust control measures are described in Section 4.3.1, and the requirements of the SWPPP are described in Section 4.3.3.

4.3.5.2 Management of Soil Stockpiles

Soil which is excavated within the RMP Area may need to be stockpiled before it is re-used. There are three potential concerns associated with the stockpiling of soils: dust generation, erosion, and unauthorized access to the stockpiles. The risk management measures that will be implemented to control each of these impacts are described below. The management measures described below apply to soil stockpiles that are in place for a period of greater than 30 days.

4.3.5.2.1 Risk Management Guidelines to Control Dust from Soil Stockpiles

As previously described in Section 4.3.1.1, the performance standard applicable to all stockpiled soils is to prevent visible dust plumes from migrating outside the parcel boundary. Water will be used to mitigate dust generation during the creation, movement, or use of the soil stockpiles. Over-watering, which could result in excessive runoff, will be avoided. Dust palliatives or other methods of dust control may be used if water proves to be inadequate.

While stockpiles are in place, dust will be controlled either through the use of a cover, or an alternative method that provides equivalent protection. If the stockpiles are covered, the cover will consist of either anchored plastic sheeting, hydroseeding (spraying a mixture of grass seed and mulch to create a vegetative cap), or an equivalent cover. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. If, however, stockpiles are to be in place and unused for one year or greater, then the stockpile will be covered with either hydroseeding or an equivalent cover.

4.3.5.2.2 Risk Management Guidelines to Control Erosion from Stockpiles

If soil stockpiles are to be in place during the rainy season (generally October through April), they will be covered with anchored plastic sheeting, hydroseeding, or an equivalent cover to minimize erosion of the soil. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. As described above, if stockpiles are to be in place and unused for one year or greater, the stockpile will be covered with either hydroseeding or an equivalent cover. Stockpiles that are placed within the boundaries of an active construction parcel greater than one-acre in size will not require additional erosion control measures, because the SWPPP will contain specific provisions to prevent off-site sediment discharges. As previously described in Section 4.3.3, the SWPPP may require that filter fences (or equivalent BMPs) be installed around the perimeter of the construction site to prevent off-site sediment discharge, if necessary. Filter fences (or equivalent BMPs) would likewise capture any sediments that may erode from the covered stockpile in place during the rainy season. The sediment traps that will be placed at the local stormwater intakes will also prevent sediments, including those that may result from erosion of the stockpiles, from entering the City's storm water system. Further details of storm water management will be included in the SWPPP (described in Section 4.3.3).

If, however, soil stockpiles are to be placed outside of the boundaries of a one acre active construction site, then additional erosion control measures may be appropriate, particularly if the stockpiles will be in place during the rainy season. To further prevent stockpile erosion, a silt fence constructed of geotextile fabric and hay bales (or other appropriate BMPs) will be constructed around all stockpiles that are placed outside of a construction site and that will exist for a period of greater than six months. Such fencing shall be placed so as to be able to encompass within the fenced area the volume of soil stockpiled.

4.3.5.2.3 Risk Management Guidelines to Control Access to Stockpiles

Access to all stockpiles located within the boundaries of an active construction site will be controlled by six-foot chain link fences or equivalent with lockable gates or, in a street, other appropriate barrier that will limit unauthorized access to the construction site (see Section 4.3.6). Additionally, warning signs will be posted on the fences to inform visitors that access is prohibited. Access to any stockpiles located outside of an active construction site will be restricted by placing fences with locked gates around the stockpiles and placing appropriate warning signs on the fences and gates.

4.3.5.2.4 Inspections of Soil Stockpiles

The Owner (or some other entity, such as a contractor, designated or certified by the Owner) shall conduct quarterly inspections of the soil stockpiles to ensure the integrity of covers, berms, and silt fences (as applicable), and to verify that the fencing is in place and that gates are locked and that the warning signs are visible. In the case of washouts of soil, the soil will be replaced to the stockpile and the area will be seeded or otherwise appropriately covered. In cases where anchored plastic sheeting is present, visible rips longer than six inches and wider than 1/4-inch will be sealed with membrane patches or replaced. The results of the quarterly inspections and a description of any material repairs undertaken will be reported to the RWQCB and the SFPDH by January 31 of each year. The RWQCB will be notified when the soil stockpiles have been fully removed.

4.3.5.3 Reuse of Native Soil within the RMP Area

The DTSC and RWQCB have determined that the soil within the RMP Area may be moved around, managed and reused within the RMP Area without triggering hazardous waste regulatory requirements, provided that the reuse is conducted in accordance with an RMP that specifies the soil management procedures. The soil management procedures are described in Section 4.3.5. Soil that is excavated and remains within the RMP Area will be placed under buildings or other covered areas such as streets, sidewalks, parking lots, roads or landscaping as described below under Section 4.3.5.5; provided, however, that before any soil removed from portions of the RMP Area currently designated for commercial use is placed as fill in any portion of the RMP Area designated for residential

use, the Owner will determine that the placement of such soil in the residential area is consistent with the human health risk Site Specific Target Levels (SSTLs) as established and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). Native Soil will not be used in the RMP Area in any manner other than described in this Section 4.3.5.3, unless the owner submits to the RWQCB supporting documentation and obtains written approval from the RWQCB.

4.3.5.4 Soil Disposal

Many of the projected construction activities in the RMP Area will require limited excavation of Native Soil to construct building pilings, elevator shafts, and other facilities. Other construction activities will require soil to be added for grading. The net balance of soil in the RMP Area is likely to be such that most excavated soil will be used for grading within the RMP Area. Based on this condition, off-site soil disposal is likely to be limited. Any soil disposed of off-site is subject to all applicable federal and state laws and regulations.

The nature of much of the Native Soil in the RMP Area is historic fill which includes construction debris, rock, glass, wood, bricks, bay mud and may contain other debris, such as pieces of metal. For use of the soil as fill material it may be necessary to remove material greater than four inches in diameter. Material not suitable for use as fill will be profiled and disposed of in accordance with all applicable laws and regulations.

4.3.5.5 Soil for Landscaped Areas

This Section 4.3.5.5 applies to landscaped areas accessible for human use. This section does not apply to landscaped areas (such as grassy swales) enclosed with fencing, covered with grates, or similarly protected to effectively prevent human access.

Materials that will be used for landscaped areas will consist of imported materials whose composition is sand, topsoil or fill that meets the prevailing commercial standards for fill used in commercial developments, or onsite material (such as Native Soil) that has been approved by the RWQCB ("Fill") in accordance with Section 4.3.5.3. The minimum depth of Fill that will be required for the landscaped areas will be between 1.0 and 1.5 feet. This depth of Fill is selected because generally accepted risk assessment protocols

assume individuals with access to surface soils may be exposed to the top 1.0 to 1.5 feet of soil. Before any Fill (including in the tree wells) is placed on top of the Native Soils in the landscaped areas, a water permeable synthetic netting fabric will be placed on top of the Native Soils, and the Fill will be placed on top of this fabric. The purpose of this fabric is as a “marker” to assist in identifying whether erosion of the Fill down to the level of the Native Soils has occurred. Irrigation systems, (defined as that portion of the system between the valve and the sprinkler head) in the landscaped areas are to be placed in Fill. The fabric will be in color other than brown or black, and will have a minimum tensile strength of 50 lbs/foot.

4.3.5.6 Contingency Protocols for Identifying Unknown Areas of Contamination and/or Unknown Underground Structures

The protocols to be followed in the event that unknown areas of contamination and/or underground structures are identified during site development are described in this section. These protocols will be conducted by the Owner, Lessee, or some other entity, such as a contractor or qualified consultant, designated or certified by the Owner or Lessee.

4.3.5.6.1 Procedures for Discovery of Unknown Areas of Contamination

Site development activities may result in the identification of previously unknown areas or types of contamination. The Soil Analysis Report, prepared per the requirements described in Appendix F and described further in Section 4.3.11, will summarize the results of the analytic testing that have been conducted on the parcel prior to Site development activities. A review of the Soil Analysis Report will allow the contractor to know the types of compounds which were previously discovered on the parcel, the magnitude of the detections, and the specific locations where they were discovered. This information, and other information in the RMP Area, will guide the contractor in determining whether an encountered environmental condition is unknown and therefore will trigger contingency monitoring, as described in the succeeding paragraphs below.

Unknown conditions which may trigger contingency monitoring procedures during site development include, but are not limited to, the following:

- oily, shiny, or saturated soil or Free Product in previously undocumented areas;
- soil with a significant chemical or hydrocarbon-like odor in previously undocumented areas;
- significantly discolored soil that reasonably indicates a concentrated source of metals within the RMP Area other than metals naturally occurring or otherwise known to be present in the Native Soils.

Upon the discovery of one of the conditions identified above, and if the conditions on the parcel vary materially from those previously documented in the RMP Area such that they could require either alternative or additional RMP measures to protect human health or additional calculations and assessments to confirm that the existing RMP measures will be sufficiently protective, the contractor will conduct the contingency monitoring.

Contingency monitoring, if conducted, will consist of the following steps: If unknown areas of potential concentrated metals are encountered, additional analyses should be conducted for the suspected constituents to assess the potential leachability of the metals, or the RWQCB should be contacted for assistance in determining if additional sampling and potential mitigation is necessary. If the encountered materials are suspected to be volatiles, the following contingency monitoring procedures may be followed:

- i) Conduct contingency monitoring by taking organic vapor readings using an organic vapor meter (OVM) or an organic vapor analyzer (OVA) to screen for the presence of fuel, oil, or solvents. If the OVM/OVA indicates that an unknown area of fuel, oil, or solvents has been detected, then the RWQCB will be notified to determine if additional sampling is appropriate prior to continuing construction in that area. Such additional characterization will not be required if the RWQCB concurs that the risk management measures currently specified in this RMP already mitigate the risk of the chemicals detected in this area. OVM or equivalent screening methods will be conducted by experienced personnel only.

- ii) If an unknown area of fuel, oil or solvents has been identified, and the RWQCB has requested additional characterization, the following steps will be taken:
 - a) Samples will be collected from the identified area and analyzed for volatiles and/or TPH compounds, depending on the suspected type of contamination. The sampling strategy will be discussed with the RWQCB prior to the initiation of the sampling activities. Analytical results collected from the suspected source will be compared to the health-based site-specific target levels (SSTLs) developed and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). If the levels are below the relevant health-based SSTLs, and the RWQCB concludes that the potential for ecological impacts is insignificant and does not require mitigation, then soil removal activities will not be required and the soil may be temporarily stored elsewhere pending reuse in the RMP Area. All soils will be contained during transport within the RMP Area so as to minimize the potential for spillage.
 - b) If the soil contains volatiles or petroleum constituents at levels that exceed the relevant health-based SSTLs, or if the RWQCB concludes that the potential for ecological impacts requires mitigation, then management measures, such as the following, will be undertaken:
 - 1. remove soil and dispose of off-site;
 - 2. install physical barrier, such as a vapor barrier or passive venting system, to prevent the accumulation of vapors in indoor environment;
 - 3. stockpile soil and aerate onsite, or in a staging area as may be appropriate, in compliance with all applicable laws and regulations;
 - 4. conduct *in situ* bioremediation measures;
 - 5. implement liquid or vapor extraction measures.

The appropriateness of one of the above management measures over another will depend on many factors, such as the type of constituent detected, the size of the identified impacted area, and the estimated cost of implementing the remedy.

- c) If Free Product is encountered, its areal extent and thickness will be characterized. The RWQCB will determine the appropriate response to the Free Product based on recommendations from the Owner or Lessee (or some other entity such as a contractor or qualified environmental consultant designated by the Owner or Lessee).
- d) The Owner or Lessee (or some other entity such as a contractor or qualified consultant designated by the Owner or Lessee) shall report the results of the sampling activities and the proposed course of action (e.g., no action necessary, soil excavation and off-site disposal, on-site treatment and soil reuse) to the RWQCB and obtain concurrence before implementing the remedial measures. Notification of the proposed action will also be provided to SFDPH. Construction activities in the specific area where the unknown conditions were identified will resume following the completion of the additional sampling activities and the implementation of any required responses.

4.3.5.6.2 Requirements for Underground Structures

During the course of excavation and construction activities within the RMP Area, it is possible that underground storage tanks (UST), sumps, maintenance pits for rail cars or other underground structures that were not discovered during previous site searches will be discovered. For example, USTs may be identified during grading and site excavation activities by the presence of vent pipes that extend above the ground surface, product distribution piping that leads to the UST, fill pipes, back fill materials and the UST itself. Other structures might not have any features that extend above the surface, and could be

unearthed when construction equipment comes into contact with them. As described below under Section 4.3.8.1, Environmental Health and Safety Guidelines, the on-site Health and Safety Officer will conduct periodic briefing meetings with all construction personnel on the procedures and reporting requirements to be undertaken when underground structures are identified. The following section outlines the measures that govern identification and removal of UST, and appropriate measures for addressing other underground structures identified during development.

4.3.5.6.2.1 Removal Requirements for Underground Storage Tanks

Chapter 6.7 of the California Health and Safety Code contains the specific requirements for removing and remediating contamination associated with a leaking UST. While the City of San Francisco's Local Oversight Program (LOP) is responsible for overseeing the removal of any UST, the RWQCB will maintain responsibility for overseeing environmental investigations and responses arising from releases from any UST in the RMP Area. Accordingly, in the event that a UST or appurtenant piping is discovered during construction and development of the RMP Area, then the RWQCB will be notified. Environmental investigations and responses required following removal of the UST will be conducted under the direction of the RWQCB and in accordance with the specific provisions delineated in Chapter 6.7 of the Health and Safety Code.

4.3.5.6.2.2 Procedures Governing the Identification, Investigation and Potential Removal of Other Subsurface Structures

For other subsurface structures that may have been related to former use and storage of chemicals, such as underground vaults and sumps, the following procedures should be followed to determine the proper disposition of the encountered structure.

- i) The structure should be inspected to assess whether it contains any indication of chemical residuals or free liquids other than water. This determination will be made with field observations by the Owner or Lessee's designated environmental engineer relying on visual observations, detection of chemical odors, and the results of vapor monitoring using a field OVM/OVA (as described above). If

there is no indication based on visual, odor, or OVM/OVA readings, that chemicals are or were present within the vault or sump, then removal of the structure is not necessary for environmental reasons.

ii) If a sump or vault contains liquids that appear, based on field observations (visual, odor, or OVM/OVA readings) to be chemical-containing, then the following steps shall be undertaken:

a) Characterize the chemical-containing liquids and/or soils, and determine the appropriate response action. Chemical-containing liquids are to be sampled for profiling purposes then properly removed and disposed under the direction of the Owner or Lessee's designated environmental engineer. The RWQCB would be notified prior to the selection of an appropriate response.

Chemical-containing soils are to be characterized as described above under 4.3.5.6.1. The procedures used to determine the appropriate action for the soils are identical to those described above in 4.3.5.6.1.

b) Inspect the sump or vault for cracks and holes once the liquids and/or chemical-containing soils are removed.

1) If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that the structure of the sump or vault is intact, and that subsurface releases of the chemicals to the underlying soils did not likely occur, then removal of the sump or vault is not required for environmental reasons.

2) If the physical inspection of the vault or sump suggests that chemicals may have been released to the underlying soils, then:

A) Conduct additional environmental investigations of the underlying soils to determine whether a release, sufficient to warrant removal, has occurred. If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that a release, sufficient to warrant removal, has not occurred, then removal of the sump or vault is not required for environmental measures; or

B) Remove the sump or vault under the guidance of the Owner or Lessee's designated environmental engineer. Response to the chemicals in the soils underlying the sump or vault, if necessary, will be consistent with the procedures described above in Section 4.3.5.6.1.

4.3.6 Access Control During Construction

The potential for trespassers or visitors to gain access to construction areas and come into direct contact with potentially contaminated soils or ground water will be controlled through the implementation of the following access and perimeter security measures:

- Except in streets, fence construction site to prevent pedestrian/vehicular entry except at controlled (gated) points. Gates will be closed and locked during non-construction hours. Fencing will consist of a six foot chain link or equivalent fence unless particular safety considerations warrant the use of a higher fence.
- In streets, use a combination of K-rails or similar barriers and fences with locked gates.
- Post "No Trespassing" signs every 250 feet.

Implementation of appropriate site-specific measures as outlined above would reduce the potential for trespassers or visitors to access construction areas and to come into direct contact with soil or ground water. The access control measures will be detailed in the Environmental

Health and Safety Plan (EHASP) (see Section 4.3.8) that will be developed prior to the initiation of construction activities. Compliance with the specific access control measures is the responsibility of the Owner or Lessee (or other entity, such as a contractor designated or certified by the Owner or Lessee).

4.3.7 Protocols for Dewatering Activities

Dewatering could be initiated within the RMP Area to facilitate excavation and subsurface construction work, such as the installation of foundations, to proceed without the constraint of working in wet conditions. Uncontrolled and extensive dewatering could adversely impact ground water by drawing ground water that contains chemicals toward the dewatered area thus causing those areas to be degraded with chemicals. If it is determined that building construction necessitates the use of dewatering methods, and the dewatering activities are to occur in or around a known area of contamination (e.g., the Free Product Area) the following risk management measures will be implemented to minimize potential impacts:

- Conduct preliminary estimates of the amount of water that will need to be removed for the specific construction activity.
- Based on the location of the proposed dewatering, determine whether the volume of water that would need to be removed would result in the enlargement of an existing ground water plume, if present, or significant alterations in the ground water flow patterns in the RMP Area.
- If the estimates of the volume and location of the ground water dewatering suggest that such activities are not likely to result in the enlargement of a ground water plume, or significant alterations in the flow patterns, then simple dewatering methods, such as the those employed through the use of a sump pump, would be implemented. These simple methods would be sufficient to prevent ground water from accumulating in an open excavation or trench.

- If, based on the opinion of the Owner or Lessee's qualified environmental engineer, dewatering is likely to result in the enlargement of an existing ground water plume or result in significant alterations in ground water flow, such as could occur in the Free Product Area, then other engineering techniques will be employed to minimize the potential dewatering impacts. One engineering technique that could be employed involves the installation of sheetpiles. In this example, the excavations will first be ringed with sheetpiles. With proper installation, sheet piles limit the volume of water entering the excavation and thus limit the dewatering operation's effect on surrounding ground water flow paths. Dewatering pumps installed inside the area surrounded by sheetpiles will lower the ground water level. Properly installed sheet piles that are interlocked and driven through dense clay materials will effectively limit ground water flow through the piles and minimize the volume of water being pumped. The appropriateness of one engineering technique over another will depend on the construction specifications and other site-specific factors and will be determined by the Owner or Lessee's qualified environmental engineer on a site-by-site basis.
- All water removed during dewatering activities will be discharged in accordance with appropriate permits from the City . It is anticipated that ground water removed during dewatering activities would be discharged into the City's sewer system. Discharge of ground water into the City's sewer system would be conducted in compliance with a discharge permit issued by the San Francisco Department of Public Works (SFDPW) or the Public Utilities Commission. If direct discharge to the surface water is determined to be the appropriate method for disposal of ground water removed during dewatering, permits issued by the RWQCB under the National Pollution Discharge Elimination System would be required. Compliance with the provisions of the discharge permit is the responsibility of the Owner or Lessee (or other entity such as a contractor or qualified environmental consultant designated or certified by the Owner or Lessee). Alternatively, it may be desirable to use the water generated during dewatering activities to control dust. If the shallow ground water is to be used for

this purpose, the Owner or Lessee will obtain advanced approval from the RWQCB on a parcel-by-parcel basis.

4.3.8 Construction Worker Management Measures

During construction activities, workers that may directly contact the Native Soil and/or the ground water will conduct the work in accordance with California Occupational Safety and Health Administration (Cal/OSHA) training and worker protection rules and regulations. The types of hazards that construction workers, or other workers involved in soil disruptive activities, are most likely to encounter include identifying previously unknown structures or areas of contamination, and having direct contact with fill materials that contain inorganic constituents and petroleum compounds and ground water that contains limited quantities of inorganics and petroleum products. Cal/OSHA is the state agency that is responsible for monitoring compliance with worker health and safety laws and requirements. Compliance with standard Cal/OSHA regulations, particularly Title 8, Chapter 4, "Division of Industrial Safety", will minimize the potential impacts associated with excavation activities, as the intent of these standards is to prepare workers for the types of hazards that are likely to be encountered during such activities. All activities conducted within the RMP Area must be in compliance with current Cal/OSHA rules and regulations, even if not expressly noted in this RMP. Further, all workers involved in subsurface activities must conduct the work in compliance with an Environmental Health and Safety Plan (EHASP). The EHASP will be an additional mechanism that will protect workers engaging in intrusive work. To achieve that goal, the EHASP will delineate the specific potential hazards associated with contact with Native Soils or ground water on the parcel under development, will specify to all workers that the fill material is likely to contain inorganic constituents, petroleum compounds and, on a parcel-by-parcel basis, other constituents, and will define the methods to be employed to minimize the hazards associated with such activities.

The minimum health and safety guidelines for all intrusive workers within the RMP Area, and a discussion of the components of the environmental health and safety plans, are provided below. Compliance with all aspects of the EHASP is the responsibility of the individuals engaged in the intrusive activities. An EHASP that meets the requirements specified in Section 4.3.8.2 will not require any further environmental approvals by any city agency, or any state agency which participated in the designation of the RWQCB as the Administering

Agency for the RMP Area under Chapter 6.65 of the California Health and Safety Code. EHASPs prepared for any construction projects will be submitted to the RWQCB as soon as reasonably practicable prior to the initiation of construction. Nothing in this RMP requires that construction workers working in the RMP Area comply with Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, unless such workers are required to comply with those requirements under Cal/OSHA rules and regulations.

4.3.8.1 Environmental Health and Safety Guidelines

While this RMP establishes the minimum requirements for an EHASP, the EHASP is a stand alone document developed by the Owner or Lessee's designated contractor or qualified environmental consultant prior to the initiation of any construction activities that would disrupt the Native Soils. It is the responsibility of the individual preparing the EHASP to verify that the components of the EHASP are consistent with current worker health and safety rules and regulations. All workers, including utility repair workers or other workers who may directly contact Native Soil or the ground water, would perform all activities in accordance with an EHASP. Consistent with the Cal/OSHA standards, an EHASP would not be required for workers such as carpenters, painters or others, who would not be performing activities that disrupt the Native Soils.

The EHASP will be designed to identify, evaluate and control safety and health with respect to the chemicals present in the soil and ground water. The EHASP will require that the on-site Health and Safety Officer conduct periodic briefing meetings (tailgate meetings) with construction personnel on the reporting requirements to be undertaken when underground structures are identified. Compliance with all aspects of the EHASP is the responsibility of the party conducting the construction activities.

4.3.8.2 Components of the Environmental Health and Safety Plans

The objectives of the EHASP are 1) to identify, evaluate and control site health and safety hazards related to the Native Soils or ground water, thereby helping to ensure the health and safety of all field personnel involved in the development activities on-site; and 2) to inform all contractors and subcontractors of the known chemical conditions present at the site so they are able to make prudent health and safety decisions related to soils and

ground water that will protect the health of the workers and the surrounding community throughout the development of the site.

The following section presents the minimum requirements for all EHASPs that will be prepared prior to construction.

General Information

This section of the EHASP will contain general information about the site, including the location of the site, the objectives of the work that the EHASP is intended to cover, and the name of the individual(s) who prepared the EHASP. This section will also contain a brief summary of the possible hazards associated with the soil and ground water conditions at the site. Based on the known conditions in the RMP Area, the principal hazards posed by the soils and ground water that construction workers will encounter will be direct contact with the inorganics present in the Native Soils and ground water.

Key Personnel/Health and Safety Responsibilities

This section of the EHASP will identify the key personnel by name, and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the site. All workers at a given parcel who will potentially contact Native Soils or ground water will be provided a copy of the EHASP and briefed as to its contents. The health and safety responsibilities of each individual will be described in this section of the EHASP.

Facility/Site Background

Background information is provided in this section of the EHASP concerning past operations, the types of contaminants that may be encountered, and a brief description of the types of construction activities that will be conducted at the site. The description of the construction activities will focus on those activities that will result in the movement of Native Soils, and/or the potential for workers to have direct contact with the soil or the ground water. This section will provide a general map indicating the location of the site under construction, highlighting those particular areas where soil movement activities or direct contact with ground water may occur. The types of contaminants that may be

encountered during the construction activities that will be clearly identified in the EHASP include the following: inorganics (including metals and asbestos), petroleum hydrocarbons, and potentially low levels of volatiles (including methane) and semivolatiles.

Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with Native Soils or ground water is presented in this section of the EHASP. The hazards that will be discussed include, at a minimum, chemical, temperature and explosion hazards, if applicable. As part of the job hazard analysis, the EHASP will identify the chemicals likely to be encountered during the construction activities, and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit (PEL)). The procedures to mitigate the hazards identified in the job hazard analysis are also presented in this section of the EHASP. The principal measure that will mitigate the hazards associated with chemicals present in soil and ground water will be the use of appropriate Personal Protective Equipment (PPE).

Air Monitoring Procedures

The air monitoring procedures will be detailed in the EHASP. The air monitoring that will be conducted during the site construction activities includes monitoring for both volatile constituents and respirable dust. The objectives and monitoring protocols for each are described below.

Air Monitoring for Volatiles

Air monitoring for volatile constituents will be conducted in the event that unknown areas of contamination are identified during the construction activities. The purpose of the air monitoring as described in the EHASP is to verify that the workers are not exposed to levels of volatiles that exceed the Cal/OSHA PELs, the relevant exposure standards for workers. The presence of those constituents with the lowest OSHA PELs will dictate the level of PPE that will be required. Of the volatiles that are likely to be

present within the RMP Area, the chemical with the lowest OSHA PEL is benzene, with a PEL of 1 ppm.

If previously unknown areas of contamination are identified, real time air monitoring for volatiles will be conducted using an OVM/OVA. Monitoring will be conducted within the breathing zone of the workers. Sustained 5-minute readings in the worker's breathing zone in excess of 1 ppm will require additional sampling methods to determine whether any of the chemicals with OSHA PELs of 1 ppm are present in the breathing zone. The most common chemical-specific monitoring instrument that provides real-time data is the Draeger Tube. Draeger tubes for benzene, and a few of the chlorinated solvents that also have OSHA PELs of 1 ppm (i.e., 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,2,2-tetrachloroethane, and vinyl chloride) may be used to measure the concentration of vapors in the worker's breathing zone if the sustained 5-minute readings using the OVM/OVA exceed 1 ppm above background.

The table below summarizes the protocols in effect as of 1999 for conducting the volatile monitoring, including the instrument, the frequency and duration of the air monitoring, the specific actions levels and the mitigation measures that should be taken in the event that the trigger levels are reached. All of these actions are based on protecting the health of the workers involved in the construction activities. It is the responsibility of the individual preparing the EHASP to verify that the air monitoring protocols and action levels are consistent with current worker health and safety rules and regulations.

Real-Time Air Monitoring for Volatiles

Instrument	Calibration Gas Standard	Frequency/Duration of Air Monitoring	Action Level Above Background	Action ^a
OVM/OVA Calibrated daily	100 ppm isobutylene	5 minutes	For unknown constituents:	
			< 1 ppm	Work Proceeds in Level D
			1 – 5 ppm	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 5 ppm	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action
Draeger Tube for Benzene, 1,2-DCA, tetrachloroethane, vinyl chloride, and 1,1-DCE	none required	Immediately following OVM/OVA reading above background in breathing zone	For known constituents:	
			< OSHA PEL	Work Proceeds in Level D
			> OSHA PEL	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 10 times OSHA PEL	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action

^a Levels of Personal Protective Equipment, identified as Level D and Level C, are described in the following section.

Air Monitoring for Particulates

As described in Section 4.3.2.2, air monitoring for particulates will be conducted to demonstrate that the health and safety of the off-site populations is not being impacted by the development/construction activities. Dust monitoring, where appropriate, will verify that concentrations of PM₁₀ at the site boundary do not exceed 250 µg/m³.

Additional dust monitoring to verify that the workers are not exposed to nonvolatile constituents at levels greater than the chemical-specific OSHA PELs for nonvolatiles is not warranted³. If significant levels of asbestos from the serpentinite-rock in the Native Soils are likely to be disturbed during the construction activities, or if other suspect material is unearthed during construction, such as pipe insulation material, then personal monitoring for asbestos may be appropriate. In that circumstance, a determination as to whether personal monitoring for asbestos is warranted will be based on the conditions specific to the parcel being developed.

Personal Protective Equipment

This section of the EHASP will identify the appropriate required PPE that will adequately protect the workers from the hazards related to contact with Native Soils or ground water that are expected to be encountered at the site. Personal Protective Equipment is selected based on the known contaminants present at a site, and the known route(s) of entry into the human body. The primary constituents present within the RMP Area that workers will be exposed to include the inorganic constituents (including metals) present in the Native Soil. The primary exposure routes include direct contact

³ A screening-level evaluation was performed to determine the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs. The equation used to calculate the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs is as follows:

$$\text{Dust Level (mg/m}^3\text{)} = \frac{\text{OSHA PEL (mg/m}^3\text{)}}{\text{Average Soil Concentration (mg/kg)}} \times \text{Conversion Factor (10}^6\text{ mg/kg)}$$

Using the 95 percent Upper Confidence Limit (UCL) of the arithmetic mean to estimate the average concentration of each of the nonvolatile constituents present in the soil, the level of dust that would need to be present within the workers breathing zone over an eight-hour period in order to exceed a chemical-specific OSHA PEL is 54 mg/m³. Given the fact that dust levels greater than 5 mg/m³ would seriously reduce visibility, and would cause unpleasant deposits in the eyes, ears and nasal passages, it is highly unlikely that levels of dust would ever reach sustained concentrations of 5 mg/m³. Thus, additional dust monitoring to determine whether workers are exposed to nonvolatile constituents at levels greater than the OSHA PELs is not necessary.

with the Native Soils (i.e., dermal contact with soil and incidental ingestion). Based on the known conditions in the Project Area, the minimum level of PPE for intrusive workers that will come into direct contact with Native Soils or ground water will be modified Level D. For the RMP Area, modified Level D protection will include a long-sleeved shirt, long pants, gloves, and boots. If unknown areas of contamination are identified during the construction activities, and if the air monitoring for volatiles indicates that the levels of volatiles present in the breathing zone exceed the OSHA-PELs, then the worker PPE will be upgraded to Level C. Upgrading to Level C is accomplished by donning a half-face air purifying respirator with the appropriate cartridge. Certain construction activities, such as the installation of utility trenches could result in workers coming into direct contact with ground water. The contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavation. However, limited direct contact with ground water could occur. In the event that excavations are occurring in areas with shallow ground water, additional PPE that will minimize contact with water, including water repellant gloves and boots, will be worn by workers.

Work Zones and Site Security Measures

This section of the EHASP will identify the specific work zones of the site, and will describe the site security measures such as the placement of barricades, fencing, access control and access logs. The work zone will be defined as the area of the site where the Native Soil movement or ground water activities are being conducted. All workers within the work zone who will have direct contact with the Native Soils or ground water will perform the work in compliance with all aspects of the EHASP. The support zone will be located outside of the work zone, but within the boundaries of the site. All end-of-the day cleanup operations, such as cleaning of the trucks wheels (for vehicles exiting the site that could be tracking Native Soils offsite), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the site. The entire site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

Decontamination Measures

This section of the EHASP will describe the specific procedures that will be used to decontaminate both equipment and personnel. Decontamination measures will include cleaning the wheels of all vehicles in the support zone prior to their exiting the site, if applicable. Additionally, any contaminated PPE will be removed and placed in a designated area in the support zone prior to leaving the site.

General Safe Work Practices

This section of the EHASP will discuss the general safe work practices to be followed at the site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, and any special precautions that may be specific to the site.

Contingency Plans/Emergency Information

This section of the EHASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash, first aid kit and a fire extinguisher, and emergency telephone numbers and contacts are identified. A map indicating the route to the nearest hospital is also provided in this section of the EHASP. San Francisco General Hospital is the closest hospital to the RMP Area. The address and phone number for San Francisco General is as follows:

San Francisco General Hospital
1001 Potrero Avenue
San Francisco, CA
(415) 206-8111

4.3.9 Quarterly Reports During Development

During periods of development on a given parcel that could result in disturbance of Native Soils or ground water, the Owner, Lessee, or their designee will prepare a quarterly status report

summarizing the activities occurring on that parcel. The primary purpose of the quarterly report is to keep the regulatory agencies apprised of the conditions arising during development. The quarterly status report will summarize the dust control measures being implemented, the results of the dust monitoring program, and any notification requirements that were triggered by the dust monitoring. Additionally, the quarterly report will summarize the results of the soil stockpile inspections, the discovery of any unknown contaminants or underground structures, and all response actions undertaken to manage such conditions. The quarterly report will be submitted within 30 days after the end of the calendar quarter to the SFDPH and the RWQCB. The Owner may request that the reports be submitted on a less frequent basis, if, based on the scale of the development, the anticipated time that the development activities will be occurring, or based on experience to date the Owner believes that less frequent reporting is appropriate. Upon the expressed approval of the RWQCB, the summary status reports may be submitted on an alternative, less frequent schedule. Quarterly reports will not be required for periods of development that will last less than four weeks.

4.3.10 Documentation of the Completion of Construction Work

At the conclusion of the development activities on parcels within the RMP Area, all Native Soils remaining on that parcel will be covered by buildings, parking lots, roads, sidewalks, or landscaping with between 1.0 to 1.5 feet of Fill, as specified in Sections 4.3.5.3 and 4.3.5.5. Following development of each parcel, a completion letter documenting that the cover is in place and is in compliance with Sections 4.3.5.3 and 4.3.5.5 of the RMP will be submitted to the RWQCB and the SFDPH. The completion letter will include a figure that will identify the location of any buildings, parking lots, roads, sidewalks and landscaping on the developed parcel.

4.3.11 Framework for Complying with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes

All construction activities in the RMP Area must comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Prior to the initiation of site development activities, a site contractor proposing to disturb 50 cubic yards or more of soil at sites located bayward of the 1851 high tide line must conduct environmental assessments of that

soil to determine if the chemicals are of sufficient concentration to cause the soil to be designated as hazardous waste, in connection with obtaining a building permit. Figure 5 presents a map of the 1851 high tide line.

As described in Appendix F, chemicals present at levels that exceed the state or federal hazardous waste levels trigger the need for the site contractor to propose measures, through a Site Mitigation Report, to address any significant health or environmental impacts, if any exist, prior to obtaining a building permit.

The framework provided below summarizes the steps that will be followed to implement and comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. As described in the preceding sections, the overall RMP for the entire RMP Area enumerates the various site mitigation measures that will be implemented throughout the development of the RMP Area and that will mitigate potential risks to human health and the environment that could be caused by the presence of chemicals in the soils or ground water. These measures will be completed at all times during the course of development, regardless of whether a building permit is required. As described more fully below, the approved RMP will become the Site Mitigation Report referred to in the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F and in the framework below, unless additional sampling conducted to comply with Appendix F indicates that the measures contained in the RMP are not sufficient. Unless additional measures not addressed in the RMP are necessary to mitigate risks, a separate Site Mitigation Report will not be submitted. The following steps shall be followed to implement compliance with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes:

- (1) Prior to obtaining a building permit from the City for a particular development activity in a portion of the RMP Area, the Owner, Lessee, or their designee will obtain confirmation from the SFDPH that the site history and sampling completed for that portion of the RMP Area (hereafter the "Site") to date are either (a) adequate to meet the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes, in Appendix F or (b) must be supplemented. In making this determination, the Owner, Lessee, or their designee will consider the analytes that had been analyzed in previous sampling events. As an example, methane sampling may be required.

- (2) If the Owner, Lessee, or their designee or SFDPH determine that supplementation of the site history or sampling is required, the Owner, Lessee or their designee will supplement the site history or sampling according to the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F.
- (3) After the Owner, Lessee, or their designee and SFDPH determine that the site history and sampling are complete, the Owner, Lessee, or their designee will review the sampling results to confirm that the RMP, using the risk-based corrective action approach and health-based criteria previously adopted by the RWQCB for the RMP Area in its approval of Mission Bay risk assessments (ENVIRON 1998a) satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified person is prepared to certify that the RMP will mitigate significant health and environmental risks).
- (4) If the Owner, Lessee, or their designee determines that the RMP meets the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit supporting documentation of that determination to the SFDPH and will provide the necessary certification required under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.
- (5) If the Owner, Lessee, or their designee determines that the RMP does not meet the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit a site-specific RMP Supplement to the SFDPH and the RWQCB containing additional risk mitigation or management measures for that Site. The submittal of the site-specific RMP Supplement will be accompanied by a certification necessary under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F. The certification shall confirm that the site-specific RMP Supplement, using the risk-based corrective action approach and the health-based criteria previously adopted for the RMP Area in approval of Mission Bay risk assessments, satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified individual is prepared to certify that the site-specific RMP Supplement will mitigate significant health and environmental risks).
- (6) Upon receipt of the certification specified in Steps Four or Five, the SFDPH will confirm that the Owner's or Lessee's certification is complete, that the applicant will have complied with the requirements of the Ordinance Requirements for Analyzing the Soil

for Hazardous Wastes presented in Appendix F upon completion of the mitigation measures applicable prior to and during construction, and will forward the certification to SFDPW so that the building permit may be issued.

- (7) Upon the completion of construction, the Owner, Lessee, or their designee will submit certification to the SFDPH that it has carried out those measures specified in the RMP or the Site-specific RMP Supplement (which satisfies the requirements for the Site Mitigation Report, as specified in Steps Three or Five) applicable prior to and during construction. Upon receipt of the certification, the SFDPH will provide the Owner, Lessee or their designee and the SFDPW with written notification that the Owner has complied with all requirements of the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.

~~4.4 Additional Management Measures Applicable to Development in the Free Product Area~~

~~A part of the RMP Area contains a measurable thickness of free petroleum product on the ground water table ("Free Product"), resulting from the historic use of that area for bulk petroleum storage and transport by numerous oil companies. The area affected by Free Product is located in the southeast quadrant of the RMP Area. As was summarized in Section 2.0, and presented in the risk assessments, the presence of Free Product will not adversely affect the health of the future populations in the area, either before or after development. However, additional management measures may be warranted when developing in the designated Free Product Area (defined below) in order to minimize impacts on construction workers and the environment. These additional measures are specified below. If Free Product is encountered in an area that is not contained in the Free Product Area (as that geographic area is deemed to change over time), then the procedures in Section 4.3.5.6.1 (Procedures for Discovery of Unknown Areas of Contamination) will apply.~~

~~All measures described below would be implemented in addition to other applicable risk management measures required by this RMP. These measures only apply to work in the area designated below as the Free Product Area.~~

5.0 RISK MANAGEMENT MEASURES AFTER DEVELOPMENT IS COMPLETE

5.1 Introduction

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to reduce long-term risks to human health and the environment from residual chemicals present in the soil and ground water after the development of parcels in the RMP Area is complete. The identification of the appropriate risk management measures was based on a comprehensive human health and ecological risk evaluation conducted to determine whether the existing environmental conditions would pose a risk to human health or the environment given the specific development plans for the RMP Area. Implementation of the management measures identified in this section is the responsibility of each Owner, Lessee, or their delegates with relevant property maintenance responsibilities.

The potential human health and ecological risks posed by the chemical constituents in the soil and ground water after development is complete are identified and discussed in Section 5.2. Section 5.3 describes the long-term risk management measures to be implemented in the RMP Area.

5.2 Identification of Potential Human Health and Ecological Impacts After Development is Complete

As described in Section 1.0, a human health and ecological risk assessment was conducted to determine whether the presence of chemicals in the soil or ground water would adversely impact human health or the environment once development of the RMP Area was complete. The populations included in the risk evaluation and the pathways through which each of the populations could be exposed to the chemicals present in the soil and ground water once development of the RMP Area is complete is presented in Appendix G. The conclusion of the risk assessment is that none of the chemicals is present at concentrations that will pose a threat to human health following the completion of the planned development. Further, with the potential exception of the Free Product Area, none of the chemicals is present at concentrations that would adversely impact the aquatic ecosystem. The potential ecological impacts associated with the Free Product Area is the subject of a separate investigation which is being conducted in accordance with RWQCB Order No. 98-028.

5.3 Long-Term Management of Risks After Development is Complete

The purpose of the following section is to describe the long-term management measures that will be undertaken to mitigate potential long-term risks to human health and the environment after construction and development of parcels in the RMP Area is completed and in the event of further construction or development at some point in the future. The components of the long-term risk management of the RMP Area are as follows:

- Covering of the RMP Area;
- Limiting future residential development within the RMP Area to preclude single family homes with private front yards or back yards;
- Restricting the future use of ground water for domestic, industrial or irrigation purposes through recordation of the Environmental Covenant;
- Providing protocols for future subsurface activities; and
- Implementing a long-term monitoring program.

These long-term risk management measures are discussed in the following sections. Compliance with all aspects of the RMP and the specific institutional controls that must remain in place during the occupancy of the RMP Area, is the specific responsibility of the Owner, Lessee or their delegates of each development area and is described further in Section 6.0.

5.3.1 Covering of the RMP Area

After development, all Native Soils will be covered by buildings, parking lots, roads, sidewalks or landscaping with between 1.0 and 1.5 feet of Fill, unless alternative measures are approved by the RWQCB. Any future development must ensure that Native Soils are precluded from contact with humans, by using buildings, pavement or appropriate Fill for landscaping.

5.3.2 Limitations on Future Development Within the RMP Area

The parcels within the RMP Area with land use designations permitting future residential development are identified in Figure 2. As indicated, the parcels targeted for residential use in Mission Bay North and Mission Bay South area are as follows:

- **Mission Bay North:** Parcels N1, N2, N3, N3a, N4, N4a and N5
- **Mission Bay South:** Parcels 2, 3, 4, 5, 6, 7, 9, 9a, 10, 10a, 11, 12, 13 and X2

Residential development within the RMP Areas identified above will be limited to preclude single family homes with private front or back yards. If residential development were to allow individual Owners or Lessees to have access to Native Soils, then those individuals would be subject to the applicable provisions of the RMP (Section 4.0).

If the Redevelopment Plans are amended to permit residential uses in areas currently designated for nonresidential use, then further risk assessment analysis will be conducted before additional residences could be built in these areas.

5.3.3 Use of Ground Water Within the RMP Area

The ground water within the RMP Area may not be used for domestic, industrial or irrigation purposes. Ground water wells will not be installed within the RMP Area except for environmental monitoring or dewatering purposes or for RWQCB-approved remediation. Environmental monitoring wells within the RMP Area would be installed in compliance with any City guidelines and would be secured and locked to prevent unauthorized access to the ground water. The ground water within the RMP Area would remain unused unless at some point in the future an assessment of the risks from direct exposure to the ground water is conducted and subsequently if the RWQCB as the Administering Agency under AB2061 approves the use of the ground water. The provision is detailed in the Environmental Covenant recorded against the properties within the RMP Area.

5.3.4 Protocols for Future Subsurface Activities

Entities contracting with Owners or Lessees to conduct maintenance, construction, or repair work which would result in the disturbance of soils under buildings, parking lots, walkways or landscaped areas would be bound by the specific requirements set forth in Section 4.0, as appropriate. Following construction, excavation, or soil disturbance, all Native Soil will be covered as described in Section 5.3.1 so that direct contact with the Native Soils will be precluded.

5.3.5 Long-Term Monitoring Program

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner (or some other entity such as a Lessee, which has by contract assumed the Owner's responsibility for compliance with the RMP after development) shall conduct an annual physical inspection of the property that confirms the following:

- The Native Soils continue to have the cover specified in Section 5.3.1 and the cover is maintained such that Native Soils are not exposed;
- Single family homes with private front or back yards are not developed within the RMP Area in accordance with Section 5.3.2;
- Ground water is not being used for domestic, industrial or irrigation purposes, as required in Section 5.3.3 and
- To the extent that the Owner or other entity procured subsurface work, the protocols for the subsurface activities were followed, as required by Section 5.3.4.

A Reporting Checklist is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample monitoring form identifying the items that should be included in the annual physical inspection is presented in Appendix C. Owners shall submit the annual inspection report to the RWQCB and the SFDPH by January 31 of each year. As indicated, the physical integrity of the cover, both the Fill in the landscaped areas and the asphalt/concrete in the other areas, will be monitored to verify that prolonged direct contact with Native Soils will not occur. For the landscaped areas, the identification of breaches in the landscaping will be aided by the synthetic fabric that will be placed between the Native Soils and the Fill during the initial development of the landscaped areas. If during the inspections, the synthetic fabric is observed, then this will serve as an indication that the Fill has deteriorated significantly and that the Fill needs repair. Similarly, the inspections of the asphalt or concrete covered areas will focus on identifying areas where breaches in the cover, and the potential for prolonged direct contact with exposed Native Soils could occur. Descriptions of the condition of the asphalt or concrete covered areas will be noted in the inspection reports, and any necessary repairs will be conducted and documented. As

the risk analyses have indicated that it is only the potential for prolonged (i.e., 25 to 30 year) daily direct contact with Native Soil that warrants management, an annual inspection/monitoring and repair program is appropriate.

6.0 REGULATORY OVERSIGHT AND ENFORCEMENT OF RMP

The purpose of this Section is to describe the regulatory oversight and enforcement mechanisms that will provide the structure for the risk management measures applicable to the RMP Area to remain in place and continue to be effective. Each Owner of any portion of the RMP Area will be notified of the RMP and its contents, and required to comply with it. This Section describes how and where the RMP will be maintained, and specifies the process through which Owners and Lessees will be notified of the RMP and informed of compliance obligations. Additionally, this Section identifies the monitoring/reporting requirements and enforcement procedures that can be exercised by the RWQCB to ensure compliance with all provisions of the RMP.

6.1.1 Public Repositories of the RMP

The RMP for the entire RMP Area shall be maintained in two locations:

- With the Administrative Clerk of the Regional Water Quality Control Board for the San Francisco Bay Region in a file labeled “Mission Bay Risk Management Plan Area” and maintained in the public record room for active RWQCB oversight sites. This file shall be available for public review during the normal business hours in the public record room.
- With the SFDPH for the City and County of San Francisco in a file labeled “Mission Bay Risk Management Plan Area” and available for public review during the normal business hours of the Department of Public Health.

Each page of the RMP approved by the RWQCB shall be dated with the month and year that the RWQCB has approved the RMP or its modifications. A page shall be added to the front of each copy of the RMP when modifications are inserted, indicating the dates and pages of the substitutions.

6.1.2 Contents of RMP Area File

Both the RWQCB and SFDPH will maintain an index for all RMP Area technical reports and data submitted. It shall include any technical reports submitted to the RWQCB or SFDPH for

the RMP Area, including without limitation, any reports or documents submitted to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. These files shall be available for public review during normal business hours.

6.2 Modifications to the RMP

It is anticipated that the provisions of the RMP may need to be amended from time to time.

Examples of circumstances that may require RMP modifications include but are not limited to:

- When currently unanticipated conditions are encountered during construction, the response to which is not specified in this RMP and it is believed that the conditions may recur;
- When the manner of construction used for particular buildings in the RMP Area is materially changed and necessitates different safeguards; or
- Evolving construction or landscape technologies or techniques allow the long-term management of risks identified in Section 5.0 to be accomplished in a different but equally protective ways.

This list is not exhaustive but merely representative of the kinds of changes that may trigger the need for appropriate modifications over the life of this project.

A proposed RMP modification will not be presented to the RWQCB unless the following entities concur in proposing the amendment: (i) the current Owner of the affected parcel; and (ii) Catellus, the City and/or the Redevelopment Agency, and the Regents of the University of California, to the extent that the proposed RMP modification affects RMP compliance obligations that are imposed upon them in their agreements with each other. All modifications proposed to the RWQCB must include a certification from the Owner that the Owner has reviewed all relevant technical reports and data on file with both the RWQCB and SFDPH, and that the modification complies with the FSEIR.

When such affected parties concur upon a proposed modification to the RMP, they will jointly present such proposed modifications to the RWQCB for their approval. The RWQCB will review the proposed changes, request any additional background information if needed, and issue a decision regarding the proposal within 45 days of receipt of a fully complete application supporting the requested modification. The decision of the RWQCB regarding the request for

modification shall be considered final and shall be accepted by all involved parties except that any aggrieved party can request that a RWQCB decision which is contrary to their interests be reviewed by the RWQCB itself at a regularly scheduled public hearing. Once the RWQCB has approved the RMP modifications, the RMP changes will be filed in the RWQCB public copy and with the Department of Public Health. The procedures for modification and review of the RMP proposed modifications set forth in this Section 6.0 are in addition to, and not in lieu of, any procedures for advance review, notice, approval and dispute resolution set forth in private contracts between Catellus Development Corporation, UCSF, the City, and the Redevelopment Agency.

6.3 Notification of Owners and Lessees and Identification of Compliance Obligations

An Environmental Covenant is recorded in the Official Records of the City and County of San Francisco against each parcel in the RMP Area and runs with the real property under California Civil Code 1471. The Environmental Covenant references the RMP and requires compliance with its provisions.

Because the Environmental Covenant is recorded, the Covenant will be provided to the Owners in the RMP Area, who will also become bound to comply, as a matter of law, with the Environmental Covenant. The Owners who have executed or become bound by the Environmental Covenant have also agreed by its terms to provide a copy of the RMP governing the parcel being transferred to applicable transferees.

The Environmental Covenant provides, among other things, that:

- Each Owner or Lessee will be deemed by their purchase, leasing or exclusive possession of the parcel within the RMP Area to be in compliance with the Environmental Covenant and the RMP. Recordation of the Environmental Covenant shall be binding on all Owners and Lessees, regardless of whether a copy of the Environmental Covenant has been attached to or incorporated into any given deed or lease.
- In all future leases, licenses, permits or other agreements between, on the one hand, an Owner or Lessee, and, on the other hand, another entity, which authorizes such entity to undertake or to engage in subject to one or more

requirements in this RMP, the Owner or Lessee will provide a copy of the RMP or its relevant provisions to such parties prior to the execution of the agreements and ensure that the agreements contain covenants that (i) such entity will comply with the RMP (to the extent the RMP applies to such parties' activities); (ii) that such entity will obligate other entities with which it contracts for construction, property maintenance or other activities that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP; and, (iii) such entity (and the entities with which it so contracts) will refrain from interfering with the title Owners' or Lessees' compliance with the RMP.

- In all agreements between an Owner and another entity provided for access to an affected parcel for the purpose of environmental mitigation, monitoring or remediation ("Environmental Response") by such entity, the Owner will provide the entity with a copy of the RMP prior to execution of the agreement and ensure that the agreements contain covenants by the entity that the entity will (i) comply with the RMP (to the extent the RMP applies to the entity's activities); and (ii) obligate any person or company with which it contracts for Environmental Response that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP.

6.4 Monitoring and Reporting

There are several junctures during the development of the RMP Area where this RMP, by its terms, requires monitoring and/or reporting. The monitoring and reporting requirements prior to, during, and after development are identified below. A Reporting Checklist, identifying each management measure and the specific reporting requirements for the different periods of development, is presented in Appendix C.

6.4.1 Prior to Commencement of Development

The Owner or Lessee (or some other entity, such as a property management company, designated or certified by the Owner or Lessee) shall follow the pre-development monitoring requirements described in Sections 3.2(v) and 3.2(vi). Appendix C presents a checklist summarizing the reporting requirements for parcels prior to the initiation of development.

6.4.2 During Development

- Prior to the initiation of construction activities within the Free Product Area, the Owner or Lessee will notify the RWQCB as described in Section 4.4.2(i).
- Prior to the commencement of development, the Owner or Lessee shall submit the dust monitoring notification to the RWQCB and the SFDPH, as described in Section 4.3.1.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall document implementation of the dust control measures, as described in Section 4.3.1.2 and shall comply with the requirements of the Dust Monitoring Program, set forth in Section 4.3.2.2. Further, the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall comply with the specific reporting requirements of the Dust Monitoring Program, as described in Section 4.3.2.2.7.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) must prepare, prior to certain types of construction activities, a Storm Water Pollution Prevention Plan (SWPPP), (as described in Section 4.3.3), must submit the SWPPP to the RWQCB, and must comply with the provisions detailed in the SWPPP.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall conduct quarterly inspections of any soil stockpiles as described in Section 4.3.5.2.4.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will provide any notification required under state, federal or local law and will provide notice of such conditions to the RWQCB as the Administering Agency for the RMP Area whenever the construction contractor encounters: (i) unknown areas of contamination in the soil or ground water, per the notification requirements described in Section 4.3.5.6.1(i) and 4.3.5.6.1(ii)(d); (ii) any other unanticipated environmental

condition, the response to which is not specified in the RMP; (iii) other indications of a release of hazardous substances or hazardous materials which is required by state or federal law to be reported to a state environmental agency; (iv) a UST, per the notification requirements described in Section 4.3.5.6.2.1; or (v) any underground structure such as a sump, vault, or other subsurface structure if it is determined that the structure was related to former use and storage of chemicals and/or releases to the underlying soils occurred, as described in Sections 4.3.5.6.2.2 (ii)(a) and 4.3.5.6.2.2(ii)(b)(2).

- The Owner or Lessee's designated contractor will submit the EHASP to the RWQCB prior to the initiation of construction if the construction project is projected to last more than four weeks, as described in Section 4.3.8.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare the quarterly status report, as described in Section 4.3.9.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare a completion letter, as described in Section 4.3.10.

Appendix C presents a checklist summarizing the reporting requirements for parcels during the period of development.

6.4.3 After Development is Complete

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner or Lessee (or some other entity such as a long-term lessee, which has by contract assumed the Owner's or Lessee's responsibility for compliance with the RMP after development) shall follow the long-term monitoring program described in Section 5.3.5. Appendix C presents a checklist summarizing the reporting requirements for parcels after development of the parcel is complete.

6.5 Enforcement Authority

Responsibility for determining whether RMP requirements have been breached and, if so, the initiation of any enforcement action where it is appropriate shall rest with the RWQCB. The information provided to the RWQCB, as set forth in Section 6.4 will apprise the RWQCB of the status of RMP compliance for the RMP Area. Upon learning that a particular parcel is not RMP compliant, the RWQCB has the authority to enforce the provisions of the Porter Cologne Water Quality Control Law, Sections 13000, *et seq.* of the Water Code, against certain entities, including those who have caused or permitted the discharge of pollutants to land where it may create a nuisance. Additionally, as the stated beneficiary of the Environmental Covenant, the RWQCB may enforce the RMP restrictions through a civil action brought against an Owner or a Lessee which is not in compliance with the RMP.

The RWQCB's enforcement activity is separate from and in addition to the enforcement authority retained by the City in ensuring compliance with Appendix F requirements during construction.

7.0 REFERENCES

- Association of Bay Area Governments. 1995. *Manual of Standards for Erosion and Sediment Control Measures, 2nd Edition*. May.
- Camp Dresser & McKee, Larry Walker Associates, Uribe and Associates and Resources Planning Associates. 1993. *Storm Water Quality Task Force, Construction Activity Best Management Practice Handbook*. March.
- ENVIRON Corporation. 1997. *Results of Investigation, Mission Bay North of Channel, San Francisco, CA*. April.
- ENVIRON Corporation. 1998a. *Site Investigation and Risk Evaluation Report, Mission Bay South of Channel, San Francisco, CA*. February.
- ENVIRON Corporation. 1998b. *Technical Memorandum #1: Approach to a Plan for Risk Management, Mission Bay Project Area, San Francisco, CA*. April.
- ENVIRON Corporation. 1998c. *Technical Memorandum #3: North of Channel Screening-Level Ecological Risk Evaluation, Mission Bay Project Area, San Francisco, CA*. April.
- ENVIRON Corporation. 1999. *Development of Health-Based Interim Target Levels for the Mission Bay Project Area. San Francisco, CA*. April.
- Regional Water Quality Control Board (RWQCB). 1998a. *Information on Erosion and Sediment controls for Construction Projects: A Guidebook (Note: date in manual is not listed)*.
- Regional Water Quality Control Board (RWQCB). 1998b. *Erosion and Sediment Control Field Manual (Note: date in manual is not listed)*.

Reporting Checklist

Period of Development	Risk Management Measure	Reporting Requirement
Pre-Development	<ol style="list-style-type: none"> 1. Access Restriction Measures <ol style="list-style-type: none"> a) Fences b) Asphalt/Concrete Cover 2. Monitoring of Soil Stockpiles 	Annual report to RWQCB and SFDPH pursuant to Section 3.2(v) and Section 3.2 (vi).
During Development	<ol style="list-style-type: none"> 1. Dust Control Measures 2. Dust Monitoring 3. Control of Off-site Runoff: Storm Water Pollution Prevention Plan 4. Management of Soil Stockpiles 5. Protocols to Manage/Control the Identification and/or Release of Unknown Contaminants from Underground Structures or USTs. 	<p><u>Prior to Commencement of Development</u></p> <ul style="list-style-type: none"> • Submit dust monitoring notification to RWQCB and SFDPH pursuant to Section 4.3.1. • Submit EHASP to RWQCB pursuant to Section 4.3.8 • Notification to the RWQCB prior to initiation of development in the Free Product Area, pursuant to Section 4.4.2 (i). • Submit site-specific SWPPP to RWQCB pursuant to Section 4.3.3 <p><u>During Development</u></p> <ul style="list-style-type: none"> • Notification to RWQCB and SFDPH if daily average dust levels exceed the dust monitoring target concentration, pursuant to Section 4.3.2.2.7. • Notification to RWQCB and SFDPH of the identification of unknown underground structures and unknown contaminants pursuant to Section 4.3.5.6. • Annual report to RWQCB and SFDPH documenting inspections of soil stockpiles pursuant to Section 4.3.5.2.4. • Quarterly status report to RWQCB and SFDPH during development pursuant to Section 4.3.9. <p><u>Conclusion of Development</u></p> <ul style="list-style-type: none"> • Completion letter regarding cover submitted to the RWQCB and SFDPH pursuant to Section 4.3.10.
Post Development	<ol style="list-style-type: none"> 1. Cover <ol style="list-style-type: none"> a) Asphalt/Concrete b) Landscaping 2. No Single Family Homes 3. No Use of Groundwater 4. Subsurface Activities Conducted in Compliance with Health and Safety Protocols 	Annual report submitted to RWQCB and SFDPH pursuant to Section 5.3.5.

**INSPECTION/MONITORING SAMPLE FORM ^a:
PRIOR TO DEVELOPMENT**

Parcel ID: _____

Owner: _____

**Individual Conducting
Inspection:** _____

Date of Inspection: _____

1) FENCES

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

2) ASPHALT AND/OR CONCRETE COVER

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

3) SOIL STOCKPILES

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

^a The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

**INSPECTION/MONITORING SAMPLE FORM ^a:
LONG-TERM MONITORING AFTER DEVELOPMENT IS COMPLETE**

Parcel ID: _____

Owner: _____

**Individual Conducting
Inspection:** _____

Date of Inspection: _____

1) LANDSCAPED AREAS

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

2) ASPHALT AND/OR CONCRETE COVER

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

3) ARE SINGLE FAMILY RESIDENCES PRESENT?

Yes ☐ No ☐

Comment:

4) CONFIRMATION THAT GROUND WATER USE IS NOT OCCURING

Yes ☐ No ☐

Comment:

5) CONFIRMATION THAT SUBSURFACE ACTIVITIES CONDUCTED IN COMPLIANCE WITH HEALTH AND SAFETY PROTOCOLS

Yes ☐ No ☐

Comment:

^a The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

SCHEDULE 1

HAZARDOUS MATERIALS DISCLOSURE

Hazardous Substances

Reference List

December 18, 2024

- Baseline Environmental Consulting. 2014. Site History Report, Seawall Lot 337/Pier 48, Mixed-Used Project, San Francisco, California (DRAFT). April 14.
- Bay Area Environmental Group. 2019. Soil Management Plan – Lightweight Cellular Concrete Pilot Mission Rock, San Francisco, California. October 8.
- Bay Area Environmental Group. 2019. Soil Sampling and Characterization Report, Mission Rock Horizontal Phase, San Francisco, California. December 13.
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SCHEDULE 2

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.



**CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR**

LICENSE NO. XXXX

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**PACIFIC GAS AND ELECTRIC COMPANY,
A CALIFORNIA CORPORATION**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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EXHIBITS

EXHIBIT A	DESCRIPTION OF LICENSE AREA AND SITE PLAN
EXHIBIT B	ESTOPPEL CERTIFICATE
EXHIBIT C	SOIL MANAGEMENT PLAN

SCHEDULE 1	HAZARDOUS MATERIALS DISCLOSURE
SCHEDULE 2	FEMA DISCLOSURE NOTICE

BASIC LICENSE INFORMATION

<i>License Date:</i>	_____, 202XX
<i>License Number:</i>	
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400
<i>Licensee:</i>	PACIFIC GAS AND ELECTRIC COMPANY , a California corporation (“ PG&E ” or “ Licensee ”)
<i>Licensee's Notice and Billing Address:</i>	Pacific Gas and Electric Company 300 Lakeside Drive, Suite 210 Oakland, CA 94612 Attn: Land Right Library
<i>Licensee's Emergency Contact and Address:</i>	Telephone: 1 (800) 660-6789
<i>Licensee's Insurance Contact and Address (not broker):</i>	Telephone: 1 (415) 973-4548
<i>Contact Information for Licensee's Agent for Service of Process:</i>	CSC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
<i>License Area:</i>	<p>The “License Area” is comprised of:</p> <p>License Area 1, which is approximately 974 square feet of land, which is a portion of Bridgeview Paseo (Assessor Parcel Number 8719A-007); and</p> <p>License Area 2, which is approximately 846 square feet of land, which is located perpendicular Dr. Maya Angelou Lane and south of Assessor Parcel Number 8719C-001;</p> <p>each within Mission Rock in the City and County of San Francisco, State of California and as depicted on <i>Exhibit A</i>, which exhibit is attached hereto and made a part hereof, together with any and all improvements and alterations thereto.</p> <p>The License Area is within a public open space.</p>

	The above-ground areas of the License Area may not be obstructed, blocked or impeded in any way by Licensee, except in connection with: (1) any Permitted Activities where all required Regulatory Approvals and any other approvals required hereunder have been obtained (including but not limited to maintenance or repair of the Utility Facility), (2) in the case of an emergency in accordance with the Additional Conditions to Permitted Activities section, below, or (3) any approved above-grade meters or valves.
<i>Utility Facility:</i>	The underground portion of a gas pipeline located within the License Area that provides gas to the Served Building.
<i>Length of Term:</i>	Sixty-six (66) years.
<i>Commencement Date:</i>	[Note: Insert the date the License is fully executed, after all necessary approvals, including Board approval of this License and once the existing agreement between MRP and PG&E has terminated.]
<i>Expiration Date:</i>	_____, 2091 [Note: Insert the date that is 66 years after the Commencement Date].
<i>License Fee:</i>	Zero Dollars (\$0.00)
<i>Security Deposit:</i>	Not applicable
<i>Permitted Activities:</i>	The License Area shall be used solely for the operation, maintenance, repair and replacement of the Utility Facility located within the License Area and for no other purpose, as further described in Section 4 , and subject to the immediately following “ Additional Conditions to Permitted Activities ” row of this Basic License Information.
<i>Additional Conditions to Permitted Activities:</i>	Except in the event of an emergency where no prior written notice to Port is required, Licensee will provide Port at least 30 days’ prior written notice before performing any maintenance or repair of the Utility Facility that requires the License Area be blocked off for more than 4 hours. Licensee’s notice will include the dates, hours, and a description of the work/plans/specifications of the maintenance or repair, including any permits required, that Licensee proposes in the License Area. If Port reasonably objects to any aspect of Licensee’s proposal, then Port will have 15 days to object in writing. Licensee will use its good faith efforts to address Port’s objections, including but not limited to

	<p>changing the proposed dates/hours to dates/hours that are reasonably acceptable to Port.</p> <p>Licensee agrees to comply with Section 5 regarding Sidewalk Closures of the Regulations for Working in San Francisco Streets (dated December 2022). The regulations may be found at: https://www.sfnta.com/reports/construction-regulations-blue-book</p> <p>During the major league baseball season and to the extent reasonably possible, Licensee will conduct planned Permitted Activities on non-home game days of the San Francisco Giants. The foregoing shall in no way limit Licensee's ability to access the License Area to address emergencies.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 4.3, Licensee shall be prohibited from using the License Area for any of the following activities:</p> <p>(a) Parking of any vehicles or placement of any equipment in the License Area, except for temporary equipment and vehicles in connection with the Permitted Activities;</p> <p>(b) Excavating any areas adjacent to or near the License Area that are comprised of lightweight cellular concrete; and</p> <p>(c) Interfering with or damaging the Other Utilities within, around, about or near the License Area.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<i>Cure Period where applicable:</i>	Defined in Section 22.1.
<i>Maintenance and Repair:</i>	Sole responsibility of Licensee—no exceptions
<i>Utilities and Services:</i>	Sole responsibility of Licensee—no exceptions
<i>Lightweight Cellular Concrete:</i>	<p>At Licensee's request, the Horizontal Developer installed the Utility Facility within the License Area in a twenty-four inch (24") wide trench that is approximately between thirty-eight and one-half inches and forty-four and one-half inches (38.5" – 44.5") deep and surrounded the Utility Facility within the License Area in a minimum of twelve inches (12") of sand.</p> <p>So long as Licensee's Permitted Activities are within the License Area, there should be no contact with or excavation of lightweight cellular concrete ("LCC")</p>

	<p>surrounding the Utility Facility. Other areas within Mission Rock, including areas outside the XXX inches of sand that surround the Utility Facility, rights-of-way within Mission Rock, and China Basin Park are comprised in whole or in part of LCC.</p> <p>Working within areas comprised in whole or in part of LCC require compliance with additional and/or different Regulatory Approvals and procedures than areas comprised of typical pavement base and asphalt concrete wearing surface applied in other areas of the City. Licensee acknowledges and accepts that the additional and/or different Regulatory Approvals and procedures may result in additional costs to Licensee to repair and backfill any excavated areas.</p> <p>Notwithstanding that Permitted Activities within the License Area should not contact LCC, Licensee must promptly notify Port if its activities under this License result in any contact with or penetration of any LCC, will comply with all such reasonable requirements and procedures regarding LCC, and will be responsible for all costs associated with backfilling and/or repairing any damage resulting from such contact or penetration, as directed by Port or its designee.</p>
<i>Franchise Fee:</i>	Not Applicable
<i>Development Project:</i>	Mission Rock, as further described in <i>Section 1.3</i> .
<i>Prepared By:</i>	Caroline Morris

[Remainder of page intentionally left blank.]

NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY NO. XXXXX

THIS NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY (this “**License**”) is dated as of the License Date set forth in the Basic License Information, for reference purposes only, by and between the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), and **PACIFIC GAS AND ELECTRIC COMPANY** (“**PG&E**” or “**Licensee**”), a California corporation. City and Licensee will sometimes hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”. The Basic License Information and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this “**License**.”

RECITALS

A. Port owns the License Area described in the Basic License Information. The License Area is within the area known as Seawall Lot 337, located south of Mission Creek/China Basin Channel in the Mission Bay neighborhood (the “**Project Site**” or “**Mission Rock**”), as more particularly described in that certain Disposition and Development Agreement dated August 15, 2018, by and between Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns, “**Horizontal Developer**”), and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Horizontal DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”).

B. Horizontal Developer constructed Licensee’s Utility Facility within the Project Site in accordance with Licensee’s specifications, including encasing the Utility Facility in sand (as opposed to LCC), as further described in the Basic License Information. Licensee subsequently pressurized and accepted the Utility Facility from Horizontal Developer.

C. Licensee will operate and maintain the Utility Facility within the License Area which Utility Facility provides gas to the Serviced Building. The License Area is owned by the Port. The License Area is generally used as open space, including for pedestrian access paseos that are open to the public at all times.

D. Pursuant to **Port Commission Resolution No. XXXX** adopted on **XXXXXXXX**, the Port Commission authorized the Port Executive Director to execute this License under the terms and conditions provided herein, subject to approval by the Board of Supervisors, which was granted by the Board of Supervisors in **Resolution No. XXXXX on XXXXXXXX**.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, PORT AND LICENSEE HEREBY AGREE AS FOLLOWS:

1. GRANT OF LICENSE.

1.1. License Area. Port hereby grants to Licensee a non-exclusive license to enter upon and use the License Area described in the Basic License Information for the Permitted Activities.

1.2. Other Utilities. Licensee acknowledges and understands that its Utility Facility is near other utility infrastructure and systems (collectively, “**Other Utilities**”), such as infrastructure for the district energy system, the blackwater system, and the electrical system for the bollards along Bridgeview Street. It is Licensee’s sole responsibility to ensure that the Permitted Activities do not adversely impact the Other Utilities, whether pre-existing or later installed pursuant to **Section 10**, below. Licensee is solely responsible for all costs and damages to the Other Utilities from the Permitted Activities.

1.3. Mission Rock Development . Licensee acknowledges that the License Area is

within the Mission Rock development site. Accordingly, there will be construction and activities associated with such construction within, adjacent to, and near the License Area throughout the Term which will generate certain adverse impacts that may result in inconvenience to or disturbance of Licensee (provided that physical damage resulting from such construction and associated activities shall be redressed). Impacts may include, but are not limited to, coordinating date and time of routine maintenance of the Utility Facility with both vertical and horizontal developers, Port tenants, subtenants and other users within the Mission Rock development site, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Licensee hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance, except for failure to redress physical damage resulting from construction and associated activities.

2. CONDITION OF PROPERTY.

2.1. AS IS Condition. Licensee acknowledges that Port has made no representations or warranties concerning the License Area shown, including without limitation, the environmental or seismological condition thereof. Licensee acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials and the FEMA disclosure notice attached as *Schedule 2* and Licensee accepts these areas “AS IS”, “WITH ALL FAULTS.” Licensee shall maintain the License Area and any other areas used in connection with this License so they will not be unsafe, unsightly or unsanitary as a result of the Permitted Activities. Licensee represents and warrants to Port that Licensee has investigated and inspected, either independently or through agents of Licensee’s own choosing, the condition of each of these areas and their suitability for Licensee’s business and intended use. Licensee acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the seismological, physical or environmental condition of these areas, the present or future suitability of these areas for Licensee’s business, or any other matter whatsoever relating to these areas, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

2.2. Accessibility. Licensee is hereby advised that the License Area has not been inspected by a Certified Access Specialist (“CASp”) for accessibility issues. Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards. Licensee understands and agrees that it may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws as a result of Licensee’s Permitted Activities.

3. TAXES AND ASSESSMENTS.

3.1. General. Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into resulting from Licensee’s possession, use, or occupancy of the License Area under this License, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy of the License Area by Licensee under this License (as distinguished from the ownership of the License Area). Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall

provide a copy of this License to the County Assessor after the Effective Date. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

3.2. Possessory Interest Tax. Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any sublease or assignment permitted under this License and any exercise of any option to renew or other extension of this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by Law, all of which shall be paid when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the License Area or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Commencement Date. Licensee shall timely provide any information to the Port or City that may reasonably be requested to ensure compliance with this or any other reporting requirement.

4. USE OF THE LICENSE AREA.

4.1. Permitted Activities. Subject to obtaining all required Regulatory Approvals and compliance with the terms and conditions of this License, Licensee may: use the License Area for the sole purpose of operating and maintaining, at Licensee's sole expense and risk, the Utility Facility, including but not limited to the right to excavate, repair, reconstruct, maintain, replace within the License Area, and remove such Utility Facility, for the purpose of gas distribution (collectively, the "**Permitted Activities**"). Any activities other than the Permitted Activities shall require Port's advance written approval, which Port may offer in its sole discretion.

4.2. Non-Interference. Licensee acknowledges and agrees that Licensee's exercise of the rights herein granted shall not impede or interfere with the use of the above-ground portion of License Area by Port and its tenants, subtenants, invitees, and members of the public without the prior written consent of Port or the Other Utilities as further described in **Section 1.2**, provided however that Port acknowledges the restrictions on its approvals and activities set forth in **Section 10(b)** of this License. Licensee shall notify and keep Port and if requested by Port, Port tenants, the master association of Mission Rock, and private property owners, informed of its activities under this License in accordance with the "**Additional Conditions to Permitted Activities**" row of this Basic License Information.

4.3. Prohibited Uses. Licensee shall use the License Area solely for the Permitted Activities and for no other purpose. Any other use in the License Area, including but not limited to the Prohibited Uses identified in the Basic License Information, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property except for the restrictions set forth in **Section 10(b)** of this License, obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) is prohibited (each, a "**Prohibited Use**"). Use of the Utility Facility by any party other than Licensee or its Agents without Port's prior written consent

pursuant to **Section 20.4**, is a Prohibited Use. For the avoidance of doubt, an Assignee approved in accordance with this License may use the Utility Facility.

In the event after inspection of the License Area by the Port that a Prohibited Use is occurring on the License Area, then Licensee shall immediately cease the Prohibited Use and shall pay to Port, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00), subject to increases set forth below, upon delivery of written notice to Licensee to cease the Prohibited Use (“**Notice to Cease Prohibited Use**”) within thirty (30) calendar days after delivery of written notice. In subsequent inspection(s) of the License Area if Licensee has not ceased the prior-cited Prohibited Use within thirty (30) calendar days, then Licensee shall pay to Port, as an additional charge, an amount equaling Four Hundred Dollars (\$400.00), subject to increases set forth below, for each additional thirty (30) calendar day Notice to Cease Prohibited Use delivered to Licensee. The Parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the License Area. Licensee’s failure to comply with the applicable Notice to Cease Prohibited Use and Port’s right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity. The amounts set forth in this Section shall be due within sixty (60) calendar days following delivery of the applicable Notice to Cease Prohibited Use.

Each charge set forth in this Section and in **Sections 8.3** (Additional Charges) shall be increased by one hundred dollars (\$100.00) on every tenth (10th) Anniversary Date after the Effective Date. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

5. EFFECTIVE DATE.

This License shall become effective on the first date (the “**Effective Date**”) that all of the following conditions are satisfied:

- (a) The Port Commission authorizes execution of this License by the Port Executive Director;
- (b) The Board of Supervisors, authorizes execution of this License; and
- (c) The Parties fully execute this License.

6. TERM OF LICENSE.

This License shall be for a term (“**Term**”) commencing on the Effective Date and expiring on the day that is sixty-six (66) years from and after the Effective Date (the “**Expiration Date**”). The License shall be irrevocable during the Term unless terminated, in whole or in part, in accordance with either of the following: (a) provided all the terms and conditions of Section 7 below are satisfied by Licensee, Licensee delivers written notice to Port of its relinquishment and termination of any or all of the rights granted hereunder; or (b) upon an Event of Default as described in Section 21 below.

7. INTENTIONALLY DELETED.

8. FEES.

8.1. General. All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to Port and delivered to Port’s address specified in **Section 24**, or such other place as Port may designate in writing.

8.2. License Fee.

(a) ***During the Term.*** If the Port Commission and the Board of Supervisors approve, there will be no license fee charged to Licensee for use of the License Area during the Term.

(b) ***After the Term.*** Upon the expiration of this License, Licensee and Port shall meet and confer to any monthly license fee for Licensee's continued use and/or occupancy of the License Area.

8.3. Additional Charges. Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate Party, upon written notice from the Port, the items identified in 16.4(a) (Licensee's Environmental Condition Notification Requirements); 16.5 (Storm Water Pollution Prevention); 34.1 (Non-Discrimination); and 37 (Estoppel Certificate); or to provide evidence of the required insurance coverage described in Section 21, then upon written notice from Port of such failure, Licensee shall pay, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00), as increased subject to Section 4.3. In the event Licensee fails to provide the necessary document within thirty (30) calendar days after delivery of such written notice and Port delivers to Licensee an additional written notice requesting such document, then Licensee shall pay to Port, as an additional charge, an amount equaling Three Hundred Fifty Dollars (\$350.00), as increased subject to Section 4.3 for each additional thirty (30) calendar days written notice Port delivers to Licensee requesting such document. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. The amounts set forth in this Section shall be due within thirty (30) business days following delivery of the written notice of such failure to submit the documents identified herein. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

8.4. Returned Checks. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission).

9. INTENTIONALLY DELETED.

10. SUBJECT TO OTHER USES.

Licensee acknowledges and agrees that this License herein granted is for Licensee's non-exclusive use and that Port shall have the right to use or permit the use by others of the License Area for any use that does not substantially interfere with the rights granted to Licensee herein, provided that,

(a) Notwithstanding the generality of the foregoing, Licensee acknowledges its obligations in ***Sections 1.2 and 4.2.***

(b) Subject to the last sentence of this paragraph, Port shall obtain Licensee's prior written consent, which consent shall be at Licensee's reasonable discretion, and which shall not be unreasonably withheld, conditioned or delayed if Port wishes to issue a license, lease or other written agreement to another party for any subsurface uses within the License Area. Notwithstanding the foregoing, the Port shall not place or construct, nor issue permits for a third party to place or construct, any building or other structure, or store flammable substances, or other non-movable obstruction, or substantially add to or diminish the ground level within the License Area; provided however, the Port may issue permits and/or allow movable street furniture such as tables and chairs in the License Area. The Port will reasonably assist Licensee to require the removal or relocation of any unauthorized uses under this Section.

(i) If Licensee's prior approval is required under **Section 10(b)**, Port shall provide sufficient documentation, including engineering drawings to enable Licensee to review any such proposed activities. Licensee shall consent or deny consent within ninety (90) days of a Port request presented to Licensee with sufficient documentation under **Section 10(b)**. Licensee's failure to respond within the 90-day period, after at least two (2) written requests from Port under Licensee's address listed in **Section 24** (Notice) highlighting the issue and 90-day deadline and reasonable further efforts by the Port to communicate the issue to PG&E through established channels of communication between the Parties, shall be deemed an approval of Port's request. If Licensee denies the request, the denial must be accompanied by an explanation of the technical rationale for the denial in sufficient detail to allow Port to submit a redesign of the requested project such that Licensee would consent.

(ii) If Licensee denies consent, Port may seek CPUC approval to allow the activity or to allow the proposed facilities to be co-located in the License Area, which approval would supersede Licensee's denial.

11. INTENTIONALLY DELETED.

12. REPAIR AND MAINTENANCE.

Licensee, at its sole cost and expense and in no later than thirty (30) days (unless Licensee requests and Port provides written approval authorizing one or more additional thirty-day periods), (a) shall repair and maintain the Utility Facility and the License Area as necessary to prevent threats to health, safety or the environment and may make other repairs all in compliance with all applicable Laws; and (b) in the event that Licensee digs, excavates, or otherwise damages any portion of the License Area or surrounding area as a result of the Permitted Activities, without limiting its obligations described in the "**Lightweight Cellular Concrete**" row of the Basic License Information, Licensee shall restore said portion of the License Area (including any surrounding area damaged or affected by such action) as nearly as reasonably possible to its condition prior to such action, including without limiting the generality of the foregoing, pavement (including any special or unique pavement unless Port requests in writing, in each instance, that Licensee restore the pavement with standard asphalt covering), sidewalks, lawns and shrubs, and any other improvements owned by the Port or City, and as may be required by Regulatory Approvals. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. Licensee acknowledges and agrees that, except in the case of an emergency, without limiting the conditions set forth in the "**Additional Conditions to Permitted Activities**" row of the Basic License Information, Licensee shall use commercially reasonable efforts to provide advance written notice, and shall obtain all Regulatory Approvals (along with full payment of all fees and charges associated with obtaining the same), and shall coordinate with Port (and at Port's request, the Master Association for the Mission Rock development or such other Port designee) prior to performing any repair or maintenance of the Utility Facility permitted under this License.

13. SURRENDER; EQUIPMENT REMOVAL PLAN.

(a) No later than twenty-four months after the expiration or notice of earlier termination of this License (and subject to the fee provisions in **Section 10.2(b)** of this License), Licensee shall surrender the License Area clean, free of debris, waste, and Hazardous Materials caused or permitted by Licensee or the Permitted Activities, and free and clear of all liens and encumbrances created by or benefitting Licensee. Licensee shall abandon in place the Utility Facility unless either Port, in accordance with **Section 14**, or Licensee reasonably determine that the Utility Facility shall be removed. If determined the Utility Facility is to be removed, it shall be in accordance with the methods and schedules of an "**Equipment Removal Plan**" developed and paid for by Licensee as that plan is approved by Port.

(b) Licensee shall submit a final Equipment Removal Plan to Port and to all Regulatory Agencies for Regulatory Approvals within ninety (90) days prior to the expiration of this License, or no later than twenty-four months following notice of earlier termination of this License. The plan must contain the following:

(i) A detailed description of the methods to be employed to remove the Utility Facility including their ultimate disposition;

(ii) Supplemental environmental information if required or necessary, to enable Port to comply with applicable Laws;

(iii) A schedule for completion of the removal of the Utility Facility;
and

(iv) Identification of the entities to be employed to execute the Equipment Removal Plan.

(c) If the Utility Facility is abandoned in place, Licensee shall deliver to Port such documentation as may be necessary to convey title to such remaining improvements to Port free and clear of any liens, mortgages, loans or other encumbrances.

(d) Should Licensee fail to remove the Utility Facility or convey title to any remaining improvements pursuant to the requirements of this Section, Licensee agrees it will be deemed abandoned. Licensee hereby waives the benefits of California Civil Code Section 1993, to the extent applicable.

(e) If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

(f) Licensee's obligation under this Section shall survive the expiration or earlier termination of this License until the abandonment, transfer, or removal of the Utility Facility in accordance with this License.

14. REQUIRED REMOVAL OR RELOCATION OF THE UTILITY FACILITY.

14.1. *Required Removal or Relocation.* Licensee agrees that it will remove or relocate without expense to Port or City any Utility Facility installed, used and maintained under this License, if and when such removal or relocation is made necessary by any lawful change of grade, alignment or width of any street or right of way, or by any work to be performed under the governmental authority of Port or the City and upon written notice of the same by Port or City. After receipt of a notice requesting relocation/removal of the Utility Facility, Licensee and the Port/City will use commercially reasonable and technically feasible efforts to facilitate the Port's/City's design and engineering of any Port or City project requiring such removal or relocation to minimize time and expense to both Parties. The Parties will negotiate in good faith to amend this License to the extent necessary to reflect the new License Area.

In the event that: (a) applicable law prohibits the removal or relocation of the Utility Facility; or (b) the required relocation would render the Utility Facility permanently unusable and thereby defeat the purpose of this License or; (c) despite Licensee's good faith efforts, a Regulatory Agency having jurisdiction over the Utility Facility prohibits Licensee from removing or relocating the Utility Facility; or (d) the Port or City can reasonably redesign or reroute such work at significantly less cost than the cost to Licensee to relocate or remove the Utility Facility, Port and Licensee agree to negotiate in good faith to allow for the Port or City to proceed in an alternative manner acceptable to all Parties, as evidenced in writing signed by Licensee and Port or City, as applicable, conditioned on Licensee bearing all commercially reasonable costs of the City/Port alternative.

Licensee shall remove or relocate the Utility Facility, pursuant to an Equipment Removal Plan as described in Section 13, within thirty-six (36) months subject to Force Majeure and reasonable extensions by Port or City after notice has been given under this Section.

To the extent that all or any portion of the License Area is surrendered as a result of a removal or relocation of the Utility Facility as provided by this Section, Licensee shall comply with the provisions Section 13.

14.2. Force Majeure Delay. The dates and times by which Licensee must perform the obligations described in this Section 14 will be extended by Force Majeure. To obtain the benefit of an extension of time due to Force Majeure (in each instance, a “**Force Majeure Delay**”), Licensee must give Port and City written notice within sixty (60) days after the earlier of the Force Majeure event or Licensee’s discovery of the Force Majeure event causing the delay to occur (“**Force Majeure Notice**”) of: (i) the cause of the delay; (ii) Licensee’s reasonable estimate of the length of the Force Majeure Delay. Unless the City or Port objects to Licensee’s estimate of the period of Force Majeure Delay within Fifteen (15) business days after timely receipt of a Force Majeure Notice (or within fifteen (15) business days after Port’s receipt of a second Force Majeure Notice if Port did not respond to the first Force Majeure Notice, the Force Majeure Delay will be the period specified in the applicable Force Majeure Notice. Each Force Majeure Notice must display prominently on the envelope enclosing such notice and the first page of such notice a statement substantially the following form (including emphasis): **“FORCE MAJEURE DELAY NOTICE. IMMEDIATE ATTENTION REQUIRED. FAILURE TO RESPOND WITHIN FIFTEEN (15) BUSINESS DAYS MAY RESULT IN A FORCE MAJEURE DELAY AS DESCRIBED IN THIS NOTICE.”**

15. COMPLIANCE WITH LAWS; PORT ACTING AS REAL PROPERTY OWNER.

15.1. Compliance with Laws. All activities performed on the License Area by Licensee its Agents shall be done in accordance with all then applicable Laws.

15.2. Proprietary Capacity. Licensee understands and agrees that Port is entering into this License in its capacity as a property owner with a proprietary interest. Except as specifically stated herein, Licensee further understands and agrees that no approval by Port for purposes of this License shall be deemed to constitute any approval required by any federal, state, regional or City authority. Before beginning any work in the License Area, Licensee shall obtain any and all necessary permits and other Regulatory Approvals for conducting the Permitted Activities and shall maintain such approvals as necessary throughout the Term of this License. Promptly upon receipt of such approvals, Licensee shall use commercially reasonable efforts to deliver copies to Port, and in any case upon request by the Port. Port shall cooperate with Licensee, at no cost to Port, to the extent necessary to obtain applicable approvals. To the fullest extent permitted by Law, Licensee agrees to indemnify and hold the Indemnified Parties harmless from and against any loss, expense, cost, damage, attorneys’ fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee’s failure to obtain or comply with the terms and conditions of any Regulatory Approval. The indemnity obligation in this paragraph shall survive the expiration or termination of this License.

15.3. Regulatory Approval. Licensee understands that Licensee’s activity on the License Area may require Regulatory Approval(s). Licensee shall be solely responsible for obtaining any such Regulatory Approval. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by Port or would create obligations on the part of Port or owners of the Other Utilities (whether on or off of the License

Area), other than those expressly acknowledged in Section 10(b) of this License, to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

Without limiting the terms and conditions of this Section, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any governmental officials, departments, boards, commissions or agencies responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a regulatory agency of the City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activities on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

16. HAZARDOUS MATERIALS.

16.1. *Compliance with Environmental Laws.* Licensee will comply and cause its Agents and Invitees, while in, on, or under the License Area, to comply with all Environmental Laws, Operations Plans (if any), the Soil Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices disclosed to Licensee, and any additional soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Utility Facility or the License Area. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed, conditioned or withheld, Handle, nor permit the Handling of, Hazardous Materials in, on, or under the License Area, except for (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, and (b) those Hazardous Materials reasonably necessary and in accordance with this Section 16.1 to operate and maintain the Utility Facility, and (c) pre-existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

16.2. *Licensee Responsibility.* Licensee agrees to protect its Agents and the general public in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during the Term:

(a) Other than the Hazardous Materials existing prior to the Effective Date in the License Area, will not permit any Hazardous Materials to be present in, on, or under the License Area except as permitted under Section 16.1 and to the extent reasonably necessary for Licensee's operation and maintenance of the Utility Facility;

(b) Will not cause or permit any Hazardous Material Condition; and

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or willfully or

knowingly permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Upon and after the Commencement Date, Licensee will be the “**Generator**” of any waste, including hazardous waste, resulting from Licensee’s Permitted Activities (other than to the extent the Horizontal Developer, Phase 1 Horizontal Developer or another vertical developer within Mission Rock is designated as the “Generator” and such designation is approved in writing by the Port’s Deputy Director of Planning and Environment); provided that the Port hereby approves Horizontal Developer and/or Phase 1 Horizontal Developer as the “Generator” of any waste resulting from such entity’s work on the License Area in connection with the first phase of the Mission Rock development; and

(e) Will comply with all provisions of the Soil Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually.

16.3. *Removal/Remedial Action of Hazardous Materials.*

(a) Nothing in this Section 16.3 shall limit the parties’ rights and obligations under Section 13 (Surrender/Equipment Removal Plan).

(b) After notifying Port in accordance with Section 16.4, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition caused or permitted by Licensee during the Term; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition, and will then provide such notice to Port in accordance with Section 16.4. Except as provided in the previous sentence, Licensee must obtain Port’s approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port’s approval of the work plan and continue diligently until Remediation is complete.

(c) In addition to its obligations under Section 16.3(b), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License any Hazardous Material Condition caused by Licensee’s or its Agents’ or Invitees’ Handling, Release or Exacerbation of Hazardous Materials during the Term.

(d) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port’s reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(e) Unless Licensee or its Subtenants or Agents or Invitees Exacerbate the Hazardous Material Condition or Release Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date.

16.4. *Licensee’s Environmental Condition Notification Requirements.* The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, (ii) the Soil Management Plan, and (iii) Environmental Laws:

(a) Licensee shall notify Port upon the issuance of any environmental permit, approval or license issued by a Regulatory Agency related to Licensee’s activities on the License Area and shall provide Port with a copy of such documents as requested from Port from time to time, and shall provide to Port any hazardous waste generator identification numbers related to

the License Area issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency, to itself, its sublicensees or Agents.

(b) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 16.1, Handled, in, on, over or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environment condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use during the Term if such Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release (or Handling of Hazardous Materials, except in accordance with Section 16.1) within twenty-four (24) hours following such Release (or Handling).

(c) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

(i) Any notice of the Release of Hazardous Materials (or Handling of Hazardous Materials, except in accordance with Section 16.1), in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area during the Term, or from any vehicles Licensee, or its Agents and Invitees use during the Term that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over or under the License Area during the Term or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use in, on, or under the License Area during the Term;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(d) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(e) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 21.3 upon Port's request.

(f) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area.

(g) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

16.5. Storm Water Pollution Prevention.

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting, if applicable. If requested by the Port, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning on-site operations, if applicable.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction storm water control provisions of the Statewide General Permit for Discharge of Storm Water from Small Municipalities and the San Francisco Storm Water Design Guidelines, subject to review and permitting by the Port.

16.6. Disclosure of Hazardous Materials. Licensee is hereby advised that Hazardous Materials may be present on the License Area, including elevated concentrations of petroleum hydrocarbons, polynuclear aromatic hydrocarbons, heavy metals, and other contaminants commonly found in public rights-of-way, fill and in Bay sediments as further described in the reports listed in *Schedule 1* attached hereto. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Licensee agrees to provide this information to its sublicensees, Agents, Contractors and Invitees in connection with their use of the License Area.

16.7. Failure to Comply. Failure to comply with this Section 16 shall constitute an Event of Default under Section 22.1(a) of this License. In the event of such default, Port shall have all rights available under this License and at law or equity including, without limitation, the right to continue this License and require Licensee to clean up such Hazardous Condition required of Licensee under this Section 16. If Licensee fails to clean up such Hazardous Condition required of Licensee, the Port may terminate this License and collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from Licensee's failure to cleanup of any Hazardous Condition required of Licensee under this Section 16.

16.8. Survival. Licensee's obligations under this Section 16 shall survive the expiration or earlier termination of this License.

17. NO COSTS TO PORT.

Licensee shall bear all costs or expenses of any kind or nature in connection with this License, including but not limited to, all costs of excavation, construction, operation, sampling, monitoring, testing, transporting and disposing of soil or groundwater and backfilling, and shall keep the License Area free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with the Permitted Activities.

18. REPAIR OF DAMAGE.

If any portion of the License Area, or any other property of Port or its Agents located on or about the License Area, is damaged by any of the Permitted Activities conducted by Licensee or its Agents, Licensee shall, at its own cost and expense, repair any and all such damage and restore said property to as nearly as reasonably possible, the condition that existed prior to such damage. If the damage does not create or result in an Emergency Condition (as defined in Section 22), then such repair and restoration shall be completed within a reasonable period but not longer than the time frame specified in Section 22 below.

19. INDEMNIFICATION.

19.1. General Indemnity. Subject to *Section 19.4*, Licensee agrees to and will Indemnify the City and Port from and against any and all Losses imposed upon or incurred by or asserted against the City and Port in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof caused by Licensee or its Agents, or that result from Licensee's Permitted Activities, and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee or its Agents, to the extent resulting from Licensee's use of the License Area under this License;

(b) any use, possession, or occupation of the License Area, and any operation, maintenance, or management of Licensee's Utility Facility in, or condition of the License Area or any part thereof related to the Permitted Activities;

(c) any latent, design, construction or structural defect relating to the Utility Facility, any other subsequent construction, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents related to the Permitted Activities;

(d) any failure on the part of Licensee or its Agents, as applicable, to perform or comply with any of the terms, covenants, or conditions of this License or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents; and

(f) any negligent acts or omissions of Licensee, or its Agents with respect to the Utility Facility, or in, on, under, or about the License Area.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under *Section 19.1* and subject to *Section 19.4*, Licensee agrees to Indemnify the City and Port from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition that occurred or was Exacerbated during the term of this License caused by any acts or omissions of Licensee or its Agents in, on, under, about, or to the License Area;

(ii) any Handling or Release of Hazardous Materials caused by Licensee or its Agents in, on, under, around or about the License Area during the term of this License as a result of the Permitted Activities;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the License Area during the term of this License caused by Licensee or its Agents as a result of the Permitted Activities; or

(iv) failure by Licensee to comply with Environmental Laws applicable to the License Area; or

(v) claims by Licensee for exposure to Hazardous Materials in, on, under, around, or about the License Area arising during the Term.

(b) Losses under *Section 19.2(a)* includes:

(i) for the following costs in subsection (x) and (y) incurred in connection with any Investigation or Remediation required by any Environmental Regulatory Agency or in the restoration of the affected area to its condition before the Release, (x) the actual reasonable costs incurred if such costs are incurred before Port tenders the Claim to Licensee, and (y) the actual reasonable costs incurred if such costs are incurred after Port tenders the Claim to Licensee;

(ii) actual damages for diminution in the value of the License Area;

(iii) sums actually paid in settlement of claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties as a result of the Permitted Activities; and

(iv) reasonable attorneys' fees and costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this *Section 19.2* due to Licensee's failure to comply with its Indemnification obligations to Port and the City under this License, Licensee must reimburse Port for Port's actual and reasonable costs within forty-five (45) days after notice from Port.

(c) Licensee understands and agrees that its liability to the City and Port under this *Section 19.2*, subject to *Section 19.4*, arises upon the earlier to occur of:

(i) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area as a result of either the Permitted Activities or the acts or omissions of Licensee or its Agents; and

(ii) the Exacerbation of any Hazardous Material Condition caused by Licensee or its Agents, or resulting from the Permitted Activities; or

(iii) the institution of any Hazardous Materials Claim with respect to such Release of Hazardous Materials or Exacerbation of Hazardous Material Condition resulting from the Permitted Activities or the acts or omissions of Licensee or its Agents, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in *Section 19.4*, Licensee's Indemnification obligations under this License are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City and Port. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the City and Port from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this License are in addition to, and in no

way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this License, at common law or otherwise.

19.4. Exclusions from Indemnification. Nothing in this Indemnity relieves the City or Port from liability, nor will the Indemnities set forth in *Sections 19.1 and 19.2*, or the defense obligations set forth in *Section 19.3* extend to Losses:

(a) to the extent caused by the gross negligence or willful misconduct of the City or Port; or

(b) from third parties' claims for exposure to, or Release or Handling of, Hazardous Materials or a Hazardous Material Condition in, on or under any portion of the License Area prior to the Effective Date of this License, or that are not a result of Licensee's or its Agents' acts or omissions, the Utility Facility, or the Permitted Activities.

19.5. Survival. Licensee's Indemnification obligations for Losses that arise during the term of this License shall survive the expiration or earlier termination of this License.

20. ASSIGNMENT; USE BY OTHERS.

20.1. Assignment; Port Consent Required. This License is personal to Licensee and shall not be assigned, except with the written consent by Port, which shall not be unreasonably withheld; provided, however, that Licensee shall have the right, with notice delivered at least sixty (60) days prior to the assignment, to assign Licensee's interest in this License to an Affiliate of PG&E (a "**Permitted Assignee**") without the prior written consent of Port so long as the Permitted Assignee assumes all of Licensee's obligations under this License.

20.2. Request for Assignment. Except in connection with an assignment to a Permitted Assignee, Licensee shall give Port at least one hundred twenty (120) days prior written notice of any desired assignment (herein "**Notice of Request to Assign**") and shall provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed assignee, (b) the current balance sheet and profit and loss statements (herein "**financial statements**") for the proposed assignee and for any other entity or person who is to be liable for Licensee's obligations under this License, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the assignment (or for such shorter period as the proposed assignee or other person may have been in existence), (c) a full description of the terms and conditions of the proposed assignment, including copies of any and all proposed assignment agreements or other documents and instruments concerning the proposed assignment, (d) a Pre-screening and Leasing Application, or other similar document, completed by the proposed assignee and delivered to Port, and (e) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed assignment and the prospective assignee. Licensee's Notice of Request to Assign shall not be deemed to have been served or given until such time as Licensee has provided Port with all information set forth hereinabove. Licensee shall immediately notify Port of any modifications to the proposed terms of the assignment.

If Port consents to the Assignment, Licensee must close the Assignment on the terms stated in the Notice of Request to Assign within one hundred twenty (120) days after Port notifies Licensee of Port's consent. If the assignment agreement does not close within the 120-day period, then Port's consent will expire, unless Licensee gives Port a new Notice of Request to Assign, in which case Port again will be entitled to exercise any of the options under this Section.

20.3. Required Provisions in Every Assignment. Each and every assignment agreement shall contain the following provisions:

(a) Each assignee shall assume all obligations of Licensee under this License and shall be jointly and severally liable with Licensee for payment of all Fees and performance of all terms, covenants and conditions to be performed by Licensee hereunder.

(b) A clause naming as additional insureds under all liability and other insurance policies “**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS EMPLOYEES AND REPRESENTATIVES**”.

20.4. Use by Others Prohibited. Except for an assignment permitted in accordance with Sections 20.1 and 20.2, Licensee is prohibited from allowing other parties use of the Utility Facility.

20.5. No Further Consent Implied. A consent to one Assignment shall not be construed as a consent to a subsequent assignment. Except as set forth in Section 20.1 above, no interest in this License shall be assignable as to Licensee’s interest by operation of Law without Port’s written consent.

20.6. Fees for Review. Licensee shall reimburse Port for all reasonable and actual costs, including without limitation, reasonable attorneys’ fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment, including any assignment to a Permitted Assignee.

20.7. No Release of Licensee. The acceptance by Port of Fees or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this License or to be a consent to any assignment, or to be a release of Licensee from any obligation under this License. No assignment of this License shall in any way diminish, impair or release any of the liabilities and obligations of Licensee unless expressly agreed by Port.

20.8. Failure to Comply. Any assignment that does not comply with this Section fully may constitute an Event of Default under Section 22.1(b) and will be void as to Port and this License.

20.9. Acknowledgement. Licensee acknowledges and agrees that each of the rights of Port set forth in Section 20 is a reasonable limitation on Licensee’s right to assign or sublet for purposes of California Civil Code Section 1951.4.

20.10. Waiver of Liability. The Indemnified Parties shall not be liable for any damage to the property of Licensee or its Agents, or for any bodily injury or death to any such Agent, resulting or arising from the condition of the License Area or its use by Licensee or for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, with the exception of damage or injury caused by the gross negligence, willful or intentional misconduct of the Indemnified Parties. Under no circumstances shall any of the Indemnified Parties be liable under any circumstances for any consequential, incidental or punitive damages.

21. INSURANCE.

21.1. Required Insurance. Except as limited in Section 21.1(e), during the Term, Licensee shall maintain in full force and effect, at its own cost and expense at all times while Permitted Activities are being conducted, insurance in the amounts and coverages set forth below. Licensee shall have the right to self-insure with respect to any of the insurance requirements required of Licensee under this License. In the event that Licensee elects to self-insure, on or before the Effective Date and thirty (30) days in advance of each Anniversary Date or the date Licensee intends to begin self-insurance for any coverage, Licensee shall submit a letter statement of self-insurance satisfactory to the Port signed by a duly authorized

representative of Licensee, such letter evidencing that Licensee's self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this License.

(a) Workers' Compensation, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance as required by Law, with Employers' Liability limits not less than One Million Dollars (\$1,000,000.00) for each accident. In the event Licensee is self-insured for the insurance required pursuant to this Section 21.1(a), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(b) Comprehensive General Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and Ten Million Dollars (\$10,000,000.00) General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting from any drilling or excavation conducted as part of the Permitted Activities. However, this provision shall not apply to claims relating to investigation or remediation of any environmental conditions on the License Area.

(c) Comprehensive Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

(d) Pollution Legal Liability Insurance with combined single limit of Five Million Dollars (\$5,000,000.00) each claim, Ten Million Dollars (\$10,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(e) Construction Activities. At all times during any period during which Licensee performs maintenance, repair, removal or relocation of the Utility Facility within the License Area, Licensee shall require its contractors that perform any services on or about the License Area to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. If Licensee has engaged Agents to work on or about the License Area other than Licensee's contractors, Licensee shall cause such Agents to carry insurance that is consistent with industry custom and practice for work of similar nature and scope.

(i) Licensee shall carry "All Risk Property Insurance," which includes coverage during construction, testing, and start-up for any and all materials, equipment and machinery intended for the Project while at the site, off-site and during transit to the site.

(ii) Licensee shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Licensee in connection with Permitted Activities within the License Area for any

improvements or any alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Licensee therefor.

21.2. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Licensee hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

(c) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(d) Licensee shall deliver to Port certificates of insurance (if policies are obtained), letters of self-insurance (if Licensee elects to self-insure) in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking system such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Licensee's broker shall complete the insurance questionnaire and submit all required documentation. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) So long as PG&E has not assigned this License (including to an Affiliate of PG&E), then not more often than every five (5) years and upon not less than sixty (60) days prior written notice, Port may require Licensee to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be reasonably required by Law, the City's Risk Manager or as is generally required by commercial owners of facilities similar in size, character, age and location as the Utility Facility with respect to risks comparable to those associated with the use of the License Area. Port expressly reserves the right to annually require Licensee to increase insurance limits or provide other coverage or coverage amounts upon assignment or transfer of this License.

(f) If at any time during the Term, Licensee or its Agents, as the case may be, fail to maintain the required insurance in full force and effect, all work under this License shall be discontinued immediately, and shall not resume until notice is received by Port that the required insurance has been renewed to full force and effect for a period satisfactory to Port.

(g) **Claims Made Policy.** Should any of the insurance that Licensee is required to hold under this License be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

(h) **Annual Aggregate Limit.** Should any of the insurance that Licensee is required to hold under this License be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

(i) **Waiver of Subrogation Rights.** Notwithstanding anything to the contrary contained herein, Port and Licensee (each a “**Waiving Party**”) each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this License or is actually covered by insurance obtained by the Waiving Party.

22. DEFAULT; REMEDIES; EMERGENCY CONDITION.

22.1. Default. The occurrence of either of the following constitutes an “**Event of Default:**” Licensee fails to cure any violation of a term, covenant, or condition of this License within thirty (30) calendar days after written notice of violation from Port, or if it reasonably would require more than thirty (30) calendar days to remedy such default, then within a time reasonably necessary to remedy such default so long as Licensee has commenced actions to cure such default within the thirty (30) calendar day period and diligently pursues its efforts to cure to completion. Any such notice of violation shall specify the nature of the default. If the default has been remedied to the reasonable satisfaction of Port during this time, Port shall not terminate this License based upon such default. For purposes of this provision, written notice of violation shall be deemed sufficiently given if sent to the applicable party at address set forth in **Section 24**. Nothing in this Section shall be interpreted to limit Port’s rights under **Section 23**.

22.2. Remedies. Upon an Event of Default by Licensee and following the applicable cure period set forth in Section 22.1 above, Port may, in its sole discretion, in addition to any other remedy Port may have at law or in equity, elect to terminate this License and Licensee’s right to use the License Area. Upon any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and surrender the License Area in accordance with Section 13 above and Port may take any and all action to enforce Licensee’s obligations.

22.3. Emergency Condition.

(a) In the Event of an Emergency Condition, Licensee must take all necessary immediate actions to the extent practicable to address the Emergency Condition, and then provide such notice to Port in accordance with Section 16.4.

(b) In the event Port notifies Licensee of an Emergency Condition, Licensee must immediately take all reasonably practicable actions to address the Emergency Condition, including but not limited actions to confine or limit the extent or impact of the Emergency Condition, and must notify the Port of the status of the Emergency Condition and all reasonably practicable actions to address it within twenty-four hours of Port’s notice.

(c) An “**Emergency Condition**” means an event or circumstance that in the reasonable opinion of the Port requires immediate action for the protection of the health or safety of any person or the prevention of substantial property damage.

(d) Failure to comply with this Section 22.3 shall constitute an Event of Default under Section 22.1(a) of this License. In addition, upon failure to comply with this Section the Port may require Licensee to suspend operation of the Utility Facility and/or cease Licensee’s activities on the License Area until such Emergency Condition has been remedied to the reasonable satisfaction of Port.

23. PORT'S ENTRY ON LICENSE AREA.

Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; and, except as provided in Section 10(b) of this License, to perform any necessary maintenance, repairs or restoration to the License Area. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area, provided no excavation shall occur unless Port notifies Underground Service Alert (USA) and opens an emergency ticket prior to any excavation and Licensee may have an inspector present during such excavation provided that Port shall have no obligation to modify its schedule or planned operations in case of emergency. Port shall comply with Licensee's reasonable standards when working near the Utility Facility. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages that result from inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area for the purposes described in this Section (except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees), or entry by the public onto the License Area.

24. NOTICES.

Any notice given under this License shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

Licensee: Pacific Gas and Electric Company
Land Management
300 Lakeside Drive, Suite 210
Oakland, CA 94612
Attn: Land Rights Library

**With a copy
to:** Pacific Gas and Electric Company
Law Department
P.O. Box 1018
Oakland, CA 94612-9991
Attn: Managing Counsel,
Law Regulatory

Port: Port of San Francisco
Pier 1
San Francisco, California 94111
Attention: Director of Real Estate and Development

Telephone: (415) 274-0400

With a copy to: Port of San Francisco
Pier 1
San Francisco, California 94111
Attention: General Counsel

Telephone: (415) 274-0400

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this License shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

25. RECORDATION.

Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

26. EXCLUSIVE BENEFIT.

The provisions of this License are for the exclusive benefit of City and Port and its successors and assigns and Licensee and shall not be deemed to be for the benefit of or confer rights upon any other person except as provided herein. Nothing herein shall be deemed a dedication of any portion of the License Area to or for the benefit of the general public.

27. SIGNS.

Except for any signs that may be required by Laws relating to the operation of the Utility Facility, Licensee shall not have the right to place, construct or maintain any sign, advertisement, awning, banner or other exterior decoration in the License Area without Port's prior written consent which consent may be granted or withheld in Port's sole discretion. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, and Licensee shall obtain all Regulatory Approvals required by Laws.

28. HOLDING OVER.

Any holding over after the expiration of the Term with the prior written consent of Port shall not constitute a renewal hereof, but shall be deemed a month-to-month license and shall be upon each and every one of the terms, conditions and covenants of this License, except that Port and Licensee shall meet and confer as to any monthly License Fee. Either Party may cancel said month-to-month license upon thirty (30) days written notice to the other Party.

29. MISCELLANEOUS.

This License may be amended or modified only by a written amendment signed by each of the Parties hereto. No waiver by a Party of any of the provisions of this License shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. This License may be executed in one or more originals or counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. Time is of the essence as to each and every provision of this License. This License shall be construed and interpreted in accordance with the laws of the State of California and the City's Charter. This License contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in

interpreting this License. This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

30. WAIVER OF CLAIMS.

Licensee hereby waives on behalf of itself and its heirs, successors, and assigns, any and all rights which it may have to file a claim or bring an action of any kind or character against the City, Port, or their respective officers, agents, or employees, for damage to property or personal injury, including death, which might arise out of the use of the License Area under this License, except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees.

31. ATTORNEYS' FEES.

If any Party hereto brings an action or proceeding (including any cross complaint or counterclaim) against any other Party by reason of a default, or otherwise arising out of this License, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this section shall include, without limitation, a Party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other Party of its claim or defense. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this License, reasonable fees of attorneys of Licensees' in-house Law Department and the City Attorney's Office shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by Licensee's in-house Law Department or the City Attorney's Office, respectively.

32. AUTHORITY.

If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of such Licensee does hereby covenant and warrant that such Licensee is a duly authorized and existing entity, that such Licensee has and is qualified to do business in California, that such Licensee has full right and authority to execute this License and that each and all of the persons signing on behalf of such Licensee is authorized to do so. Upon Port's request, a Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

33. MINERAL RESERVATION.

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Rent or otherwise relieve Licensee from any of its obligations under this License.

34. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this Section 34 relating to any applicable code provision shall be deemed an Event of Default under Section 22.1(b) of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

34.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code) and shall require all Sublicensees and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

(d) **CMD Form.** On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) **Penalties.** Licensee understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

34.2. Requiring Health Benefits for Covered Employees. Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 121.3(d) of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a "small business" by the City pursuant to Section 121.3 of the HCAO, it shall have no obligation to comply with Section 34.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Licensee shall notify the Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Licensee based on the Sublicensee's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that

fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

34.3. *First Source Hiring.* The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply, to the extent applicable to Licensee, with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this License.

34.4. *Local Business Enterprises.* The Port Commission encourages the participation of local business enterprises (LBEs) in Licensee's operations. Licensee agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

34.5. *Indoor Air Quality.* Licensee agrees if applicable to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

34.6. *Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.* Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

34.7. *Prohibition of Alcoholic Beverages Advertising.* Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

34.8. *[Reserved.]*

34.9. *Restrictions on the Use of Pesticides.* Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City’s written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee’s primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee’s staff or contractors. If Licensee or Licensee’s contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

34.10. *MacBride Principles Northern Ireland.* Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

34.11. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

34.12. *Preservative-Treated Wood Containing Arsenic.* Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “**preservative-treated wood containing arsenic**” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the

Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

34.13. Notification of Limitations on Contributions. If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.13 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee's bid or contract. Additionally, Licensee certifies that if this Section 21.13 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

34.14. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

34.15. Conflicts of Interest. Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

34.16. Drug-Free Workplace. Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

34.17. Prevailing Wages and Working Conditions. Licensee shall comply to the extent applicable to Licensee with all prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720

et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee’s failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Licensee shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

34.18. *Consideration of Criminal History in Hiring and Employment Decisions.*

(a) Licensee agrees to comply with and be bound by all applicable provisions of Labor and Employment Code Division II, Article 142 (formerly San Francisco Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; “**Article 142**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee shall incorporate by reference the provisions of Article 142 in all sublicensees of some or all of the License Area, and shall require all sublicensees to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection shall constitute an Event of Default under Section 22.1(b) of this License.

(c) Licensee and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

(f) Licensee and sublicensees shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 142.8.

34.19. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Licensee's improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee's improvements or alterations, Licensee shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

34.20. San Francisco Bottled Water Ordinance. Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the

License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

34.21. *Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.* Licensee shall not install or permit any vending machine on the License Area without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall constitute an Event of Default under Section 22.1(b) of this License. Without limiting Port’s other rights and remedies under this License, Port shall have the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

34.22. *Licensee’s Compliance with City Business and Tax Regulations Code.* Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 34.24 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

34.23. *Consideration of Salary History.* Licensee shall comply if applicable with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K) (Consideration of Salary History Ordinance or "Pay Parity Act"). For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

35. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS.

No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License.

36. DOCUMENTS AND INFORMATION SHARING.

Licensee shall provide to Port and, upon request, to any other City department without charge, copies of all publicly-available documents required to be submitted to Regulatory Agencies in connection with the Utility Facility, including, copies of any studies, applications, reports, documents, memorandums, permit applications, permits, licenses, plans, drawings,

applications of rate approvals, or other agreements (collectively, “**Studies**”). Studies may be provided electronically in the format in which they were received by Licensee or in PDF format. Upon request, which shall identify the document(s) or categories of document(s) subject to the request, Licensee shall also provide the requesting City Department with supporting documentation for any Studies that Licensee is not contractually prohibited from sharing with a third party relating to the Project, including but not limited to, any Studies relating to the San Francisco transmission grid and its substations and any Studies (including but not limited to, Studies regarding marine resources, Hazardous Materials, geotechnical conditions, and navigation/shipping channel locations) related to alternative routing of submarine cables. In addition, Licensee shall, without charge, meet with Port or other City agencies as designated by Port as reasonably required to assist Port or City agencies in reviewing the Studies, determining their potential applicability to other City or Port projects, and assessing the feasibility of, or, under commercially reasonable prices and terms, assisting in or undertaking the construction of projects to the extent authorized by the Board of Supervisors. Such meetings shall take place at Port’s office or another location within the City, as designated by Port or another City agency.

For purposes of this Section, “Licensee” shall mean PG&E, an Affiliate of PG&E or any successor or assign.

37. ESTOPPEL CERTIFICATES.

Licensee shall execute and deliver the certificate form attached to this Lease as ***Exhibit B*** within ten (10) business days of receipt by Licensee of a written request by Port.

38. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this License, Licensee acknowledges and agrees that no officer or employee of City has authority to commit City to this License unless and until City’s Board of Supervisors shall have duly adopted a Resolution approving this License and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a Resolution, and this License shall be null and void if City’s Mayor and the Board of supervisors do not approve this License, in their respective sole discretion. Approval of this License by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted, nor will any such approval create any binding obligations on City.

39. MISCELLANEOUS PROVISIONS.

39.1. California Law; Venue. This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City’s Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

39.2. Entire Agreement. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

39.3. Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

39.4. Severability. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

39.5. Interpretation of License.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

39.6. Successors. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

39.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

39.8. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

39.9. Electronic Signature. This License may be executed by electronic signatures and transmitted in a pdf version by email and such electronic signatures shall be deemed as original for purposes of this License and shall have the same force and effect as a manually executed original.

39.10. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

39.11. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

39.12. Time is of Essence. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

39.13. Cumulative Remedies. All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

39.14. Survival of Indemnities. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

39.15. *Relationship of the Parties.* Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

39.16. *No Recording.* Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

39.17. *Additional Written Agreement Required.* Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

40. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"**ADA**" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"**Affiliate of PG&E**" shall mean (A) an entity that controls, is controlled by or is under common control with, PG&E, or (B) an entity that acquires all or substantially all of the business and assets of PG&E or a division thereof or results from a merger with PG&E or such a division. A party shall be deemed to "control" another party for purposes of the aforesaid definition only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party.

"**Agents**" when used with reference to either Party to this License or any other person, means the officers, directors, employees, agents, and contractors of the Party or other person, and their respective heirs, legal representatives, successors, and assigns. References in this License to a Party's acts or omissions will mean acts or omissions by that Party and its Agents and Invitees unless the context requires or specifically states otherwise.

"**Anniversary Date**" means the first and each subsequent anniversary of the Effective Date.

"**CEQA**" means the California Environmental Quality Act.

"**Claims**" mean claims, judgments, losses, costs, expenses, injuries, settlements, liens, damages, penalties, fines or liabilities.

"**days**" mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

"**Effective Date**" is defined in Section 5.

"**Emergency Condition**" is defined in Section 22.3.

"**Environmental Covenants**" means any recorded deed restrictions, as may be in effect from time to time, which impose conditions under which certain land uses will be permitted at designated portions of the License Area.

“Environmental Laws” means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this License. **“Environmental Laws”** include the City’s Pesticide Ordinance (Chapter 3 of the San Francisco Environment Code), the Soil Management Plan, and Environmental Covenants.

“Environmental Regulatory Action” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“Environmental Regulatory Approval” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

“Equipment Removal Plan” is described in Section 13.

“Event of Default” is defined in Section 22.1.

“Exacerbate” or “Exacerbating” “Exacerbate” or “Exacerbating” when used with respect to Hazardous Materials means any act or omission, including the disturbance, removal or generation of Hazardous Materials in the course of the Permitted Activities, that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission of Licensee or its Agents, or otherwise requires Investigation or Remediation that would not have been required but for such act or omission. **“Exacerbation”** has a correlating meaning.

“Expiration Date” is defined in Section 6.

“Fees” means the License Fee, if any, and all other fees, charges and sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 9.

“Force majeure” means a delay in Licensee’s performance of its obligations under this License to the extent caused by (a) acts of nature, enemy action, civil commotion, fire, flood, earthquake or other casualty, (b) strikes or other labor disputes (to the extent not resulting from the labor practices of Licensee), (c) material shortages of or inability to obtain labor or materials beyond the reasonable control of Licensee, (d) any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, brought by plaintiffs unaffiliated with Licensee that challenges the validity of: (A) any action taken by a Regulatory Agency in connection with the obligation to be performed, or (B) the failure of a

Regulatory Agency to impose conditions to a Regulatory Approval for the obligation to be performed or (C) the validity of any other Regulatory Approval required in connection with the obligation to be performed, and (e) delays by Regulatory Agencies in issuing requisite approvals or consents beyond the reasonable control of Licensee so long as Licensee is diligently proceeding to obtain the necessary Regulatory Approvals. Delays beyond Licensee's reasonable control exclude delays to the extent caused by the negligent act or omission or willful misconduct of Licensee.

"Force Majeure Delay" is defined in Section 14.2.

"Force Majeure Notice" is defined in Section 14.2.

"Handle" or **"Handling"** when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material.

"Hazardous Material" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified in the Soil Management Plan.

"Hazardous Materials Claim" means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, over or under the License Area emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term.

"Horizontal DDA" is defined in Recital A.

"Horizontal Developer" is defined in Recital A.

"HRC" means the San Francisco Human Rights Commission.

"Indemnified Parties" means Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever.

"Indemnification" and **"Indemnity"** have correlating meanings.

“Interest Rate” means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

“Investigate” or **“Investigation”** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that may be located, have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property, or the environment, or events affecting receptors or the environmental condition in, on, over, or under, the License Area. Investigation will include, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“Invitees” means Licensee’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires and any other person whose rights arise through them.

“Late Charge” means a fee of ten percent (10%) of the amount outstanding.

“Law” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan) and any amendments, and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area including Regulatory Approvals issued to Port which require Licensee’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the Parties.

“License Area” is defined in Section 1.1.

“Master Lease” is defined in Recital A.

“Other Utilities” is defined in Section 1.2.

“Permitted Activities” is defined in 4.1.

“Prevailing Party” is defined in Section 31.

“Prohibited Use” is defined in Section 4.3.

“Project Site” is defined in Recital A.

“Regulatory Agency” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, potentially including the Federal Energy Regulatory Commission (“FERC”), the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port’s Chief Harbor Engineer, the United States Department of Labor, now or later having jurisdiction over Port property, Licensee, and the Project.

“Regulatory Approval” means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

“Release” when used with respect to Hazardous Materials means any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, releasing or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

“Remediate” or **“Remediation”** when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize,

monitor, remediate, or otherwise control Hazardous Materials located in, on, over, or under the License Area or which have been, are being, or threaten to be Released into the environment from the License Area or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“**Serviced Building**” means the buildings and improvements located on Assessor Parcel Numbers 8719A-008 and 9719C-001, more commonly known as 300 Toni Stone Crossing and 1070 Bridgeview Way within the Project Site, which buildings receive gas from the Utility Facility.

“**Soil Management Plan**” means that certain Soil Management Plan dated as of October 18, 2019 and prepared by Ramboll US Corporation for the Project Site, approved by Port, DPH, and DTSC, a copy of which is attached as ***Exhibit C*** hereto.

“**Studies**” is defined in Section 36.

“**SWPPP**” is defined in Section 16.5(a).

“**Term**” is defined in Section 6.

“**Utility Facility**” is defined in the Basic License Information.

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IN WITNESS WHEREOF, the undersigned have executed this License as of dates indicated below.

San Francisco Port Commission: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Elaine Forbes
Executive Director

Date Executed: _____

Licensee: **PACIFIC GAS AND ELECTRIC COMPANY,**
a California corporation

By: _____
Name: _____
Title: _____

Date Executed: _____

By: _____
Name: _____
Title: _____

Date Executed: _____

APPROVED AS TO FORM:
DAVID CHIU
CITY ATTORNEY

By: _____
Justin Bigelow
Deputy City Attorney

Drafted By: Caroline Morris, Project Manager _____
(initial)

EXHIBIT A
LICENSE AREA

3RD STREET

BLOCK A

DR. MAYA ANGELOU PASEO

BLOCK G

LICENSE
AREA 1

97.4'

BRIDGEVIEW PASEO

BLOCK K
(MASTER
LEASE AREA)

PIER 48

TONI STONE CROSSING

10'TYP

BLOCK B

DR. MAYA AGNELOU WAY

BLOCK F

BRIDGEVIEW WAY

TERRY A. FRANCOIS BLVD

CHANNEL
WHARF

CHANNEL LANE

LOT A
(MASTER LEASE AREA)

84.6'

LICENSE AREA 2



PG&E Gas License Areas



Port Open Space

EXHIBIT B
ESTOPPEL CERTIFICATE

The undersigned, _____, is the licensee of a portion of the real property commonly known as [Insert License Area Address/Location] located in San Francisco, California (the "Property"), and hereby certifies to THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port") [and to _____ ("Other Party")] the following:

1. That there is presently in full force and effect a license (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "License") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "License Area").
2. That the License has not been modified, assigned, supplemented or amended except by:
3. That the License represents the entire agreement between Port and the undersigned with respect to the License Area.
4. That the commencement date under the License was _____, 20__, the expiration date of said License is _____, 20__.
5. That the present minimum monthly license fee which the undersigned is paying under the License is \$_____.
6. The security deposit held by Port under the terms of the License is \$_____ and Port holds no other deposit from Licensee for security or otherwise.
7. That the undersigned acknowledges that Port has no obligation to make any improvements to the License Area.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the License or otherwise against the fees or other charges due or to become due pursuant to the terms of the License.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the License, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the License by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the License, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the License by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, Other Party and [its/their respective] successors and assigns.

Dated: _____, 20__.

[Name of Licensee]

By:

Name:

Title:

EXHIBIT C
SOIL MANAGEMENT PLAN

Prepared by

Ramboll US Corporation
Emeryville, California
Irvine, California

Submitted to:

California Environmental Protection Agency
Department of Toxic Substances Control
Berkeley, California

San Francisco Department of Public Health
San Francisco, California

Project Number

1690001737

Date

October 18, 2019

SOIL MANAGEMENT PLAN
MISSION ROCK DEVELOPMENT
SAN FRANCISCO, CALIFORNIA

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FIGURES

Figure 1:	Project Location Map
Figure 2:	Project Layout

ATTACHMENTS

Attachment 1:	Contact Information for Notification
Attachment 2:	Field Reporting Form
Attachment 3:	Spill Reporting Form
Attachment 4:	DTSC's Information Advisory on Clean Imported Fill Material
Attachment 5:	Excerpt from Mission Bay RMP

1. INTRODUCTION

On behalf of Mission Rock Development Partners (Mission Rock), Ramboll US Corporation (Ramboll) has prepared this Soil Management Plan (SMP) related to redevelopment activities within the approximately 21 acre Mission Rock Development Project Area (Development Area or Site), including the former H&H Ship Service Company facility (Former H&H Facility) that was located at 220 Terry Francois/China Basin Street, San Francisco, California, in the northeast portion of the Site (see Figures 1 and 2). All portions of the Development Area are owned by the City and County of San Francisco (“Owner”) and are subject to a Master Lease and Disposition and Development Agreement between the Port of San Francisco and the Master Developer, Seawall Lot 337, Associates. The site will be subdivided to create development parcels, which will be leased by vertical developers for development. As discussed in further detail below, this SMP is intended to concurrently serve as a Site Mitigation Plan for the Development Area, as required by the City of San Francisco, and as an SMP required by the California Department of Toxic Substances Control (DTSC) for the Former H&H Facility. This SMP supersedes a previous SMP prepared in 1999 (Geometrix, 1999).

The Development Area is currently comprised of China Basin Park in the north, with the remaining and largest portion consisting of an asphalt-paved parking lot. The approximately 2.4 acre Former H&H Facility is located in the northeast corner of the surrounding Development Area. The property that is the Former H&H Facility is entirely within the asphalt-paved surface parking lot.

The Former H&H Facility has been subject to oversight by the DTSC since 1978, when the DTSC’s predecessor agency determined that some of the wastes handled by H&H were “hazardous wastes” under California law. The facility was closed under the DTSC corrective action program in phases, with DTSC approving facility closure in 1999. As part of the approval of the Former H&H Facility remediation, DTSC required the recordation of two DTSC-approved land use covenants (LUCs) for separate portions of the Former H&H Facility. One LUC, recorded in 2000, applies to a 1.8 acre portion of the Former H&H Facility (“2000 LUC Area”), and another LUC recorded in 2002 was recorded for a 0.6 acre area (“2002 LUC Area”) within the facility. Both LUCs outline certain land use restrictions and prohibit direct contact with “native” soils (i.e. historical fill material currently in place). To implement these requirements, both LUCs require a DTSC-approved SMP for the areas subject to the LUCs.

In light of the land uses projected for the Development Area (described in Section 1.7 below) and based on an updated Human Health Risk Assessment for those land uses, the Owner recently proposed revisions to the LUC recorded in 2000. DTSC approved those revisions on September 16, 2019, and an amended LUC for the 1.6 acre portion of the Former H&H Facility (the “2019 Amended LUC”) was recorded on September 24, 2019. The 2019 Amended LUC superseded the 2000 LUC, and continues to require an SMP for the area subject to the LUC.

In addition to DTSC oversight of the Former H&H Facility, the entire Development Area is subject to the requirements of Article 22A of the San Francisco Health Code (Maher Ordinance), which was adopted in 1986 by the San Francisco Board of Supervisors in response to public concern regarding hazardous materials exposure to fill material that was

placed in areas along the historical shoreline areas of San Francisco due to the placement of fill material after the 1906 earthquake and fire. The fill typically contains elevated concentrations of contaminants such as petroleum hydrocarbons and heavy metals. The applicability of the ordinance was expanded in 2013 to include areas in San Francisco with current or historical industrial use or zoning, areas within 100 feet of current or historical underground tanks or filled former Bay or creek areas and areas within 150 feet of a current or former elevated highway. For any site covered by the ordinance for which a City of San Francisco or Port of San Francisco building permit is necessary and for which there are plans to disturb at least 50 cubic yards of soil, the ordinance requires SFDPH review of the site history (e.g., a Phase I environmental site assessment), prior sampling data, future construction plans, and other available information. In a letter dated December 22, 2016, SFDPH confirmed that no additional sampling was necessary for Maher Ordinance compliance in relation to the Development Area, and requested the submittal and approval of a Site Mitigation Plan and Dust Control Plan for the project.

Based on the collective procedures and best management practices that will apply across the entire Development Area, this Soil Management Plan satisfies several regulatory requirements:

1. The requirements for a DTSC-approved SMP specified in the 2019 amended LUC and the 2002 LUC for the areas subject to those LUCs (i.e., the 2000 and 2002 LUC Areas, respectively).
2. The requirements for a Site Mitigation Plan for the entire Development Area under the Maher Ordinance.
3. In addition, a small portion of the Site (approximately 0.37 acres along the entirety of the southern Site boundary) was formerly located within the Mission Bay Redevelopment Area of San Francisco. This approximately 20 to 25 foot strip of land was historically known as Mission Bay Block (Parcel) 20. Although the Parcel 20 portion of the Site has been removed from the Mission Bay Redevelopment Area, it currently remains subject to the Mission Bay Risk Management Plan (RMP).¹

This SMP provides protocols and guidance that Site contractors must follow in the event that evidence of soils impacted by petroleum products or other contaminants are encountered during the Site demolition, grading, or other redevelopment activities at the Site. It also incorporates and implements certain requirements specified in the 2019 Amended LUC, including ensuring that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing soil.

The Owner, future and current lessees or sublessees, developers, occupants and managers, as well as contractors delegated or authorized to perform construction and/or property maintenance activities on their behalf ("Contractor"), are required to comply with the measures identified in this SMP when engaging in (or soliciting or directing others to engage

¹ In 2017, the San Francisco Regional Water Quality Control Board transferred authority for implementation of the RMP to SFDPH. See Section 3.10 and Attachment 5 for a summary of RMP-based requirements specific to this portion of the site.

in) the relevant activities discussed below. The LUCs recorded against portions of the Site also require the Owner, lessees, occupants and their agents to comply.

For that reason, as used in this SMP, the term “Responsible Entity” shall mean those persons (whether individuals, corporations, or other legal entities) on whose behalf the activities regulated by this SMP are conducted. For example, the Owner may contract with a third party to perform ground-intrusive activities in the parks or open spaces on the Site. Similarly, the San Francisco Department of Public Works may contract with a third party to install or repair utilities in the public streets within the Site, or a lessee may contract with a construction company or property maintenance company or similar entities to perform certain activities on the Site. In addition, a Master Association comprised of commercial and/or residential tenants at the Site may assume responsibility for maintaining certain buildings, other structures, and landscaped common areas, such that the Association contracts with third parties to conduct ground-intrusive maintenance activities. Each of these entities and their respective general contractors and other contractors performing such work are “Responsible Entities” or “Contractors” obligated to comply with this SMP. A former lessee, licensee, permittee, or other former holder of a property or contract right who, at such time when activities regulated by this SMP are conducted, no longer holds an interest in title to a parcel or no longer has a property or contract interest in a parcel, will not be considered a Responsible Entity for purposes of this SMP.

1.1 Purpose of SMP

The purpose of the SMP is to generally describe the procedures that will be employed when areas of known or potentially impacted soils are encountered during Site redevelopment activities. The SMP has been developed to facilitate the redevelopment of the Site, by outlining procedures that will be used for identifying, testing, handling, and disposal of impacted soil that may be encountered during the redevelopment activities. Implementing the procedures in this SMP will ensure that impacted soil (if encountered, see Section 3) is handled in a manner that is protective of human health and the environment, in accordance with State and local regulations.

The results of various subsurface investigations performed at the Site from 1994 to present are summarized in Section 1.5.

1.2 Site Setting

The Development Area is approximately 21 acres in size and is located adjacent to the Mission Bay neighborhood of San Francisco (Figures 1 and 2). The Development Area is bound by the San Francisco Bay to the north and east, Mission Rock Street to the south, and 3rd Street to the west. The Former H&H Facility was formerly located at 220 Terry A. Francois Boulevard/China Basin Street (as streets and addresses have changed over time, this location is west of Pier 54) in the northeast portion of the Development Area (Figures 1 and 2).

China Basin Park comprises the northern portion of the Development Area. The remainder of the Development Area is comprised of an asphalt-paved parking lot.

1.3 Site Background

Prior to 1906, the Development Area was comprised of shallow tidal flats of San Francisco Bay. In 1906, the Development Area and surrounding properties were created by filling and raising the land surface above the Bay following the 1906 earthquake and fire. After 1906, historical Site uses include railway yards and warehouses, metal fabrication and machine shops, truck repair shops, and shipping services.

1.3.1 Railway Yards and Warehouses

Between approximately 1913 and 1956, the Development Area was occupied by the Atchison, Topeka, and Santa Fe (ATSF) railway yards and associated structures, including storage warehouses on the western portion of the Development Area, a railroad supply depot on the southern portion of the Development Area, and a roundhouse south of the Development Area. Although the ATSF railway yards closed in the 1950s, the storage warehouses remained on Site as late as 1999.

1.3.2 Metal Fabrication and Machine Shops

Metal fabrication and machine shops were located in the northern portion of the Development Area from approximately 1949 to 1993.

1.3.3 Truck Repair Shops

Two truck repair shops operated in the northern portion of the Development Area beginning in 1968.

1.3.4 H&H Ship Services Company

In 1950, H&H began operating a marine and industrial tank cleaning facility at the Site. H&H's operations included cleaning bulk oil cargo and fuel tanks on ships and barges and recycling of waste oil and water. These activities were later found by DTSC's predecessor to be subject to hazardous waste regulation and in 1978, H&H began operating under Resource Conservation and Recovery Act (RCRA) interim status pending approval of its RCRA operating permit and facility upgrades. In 1982, H&H began underground storage tank (UST) cleaning operations, which involved cleaning and dismantling discarded USTs. The Former H&H Facility included the former Tank Transfer Area (TTA), which was located near Pier 48 and San Francisco Bay at the northeast side of the site, and the Tank Cleaning Area (TCA), Container Storage Unit (CSU) area, and Solidification Unit (SU), which were centrally located on Site.

In 1993 H&H ceased operations at the Site, and subsequently implemented closure activities under the DTSC corrective action program including removal of remaining hazardous wastes and equipment, and cleaning of remaining facilities e.g., concrete pads. Sampling was conducted at the Site in 1999 to document clean closure of H&H's hazardous waste management units. DTSC approved the final closure of the Former H&H Facility in 1999 subject to the placement of certain restrictions and requirements contained in land use covenants.

The 2000 LUC covered the former TTA operations. The 2002 LUC covered H&H's wastewater treatment and transfer operations (including the TCA, CSU, and SU) from approximately 1950 through 1996, including the use of aboveground storage tanks (ASTs) for receiving,

settling, and treating wastewater containing petroleum. Sampling at the 2002 LUC Area was conducted as part of closure activities in 1995, and additional samples were collected in 2001.

1.4 Site Geology and Hydrogeology

The Site and overall Development Area are currently relatively flat and at an elevation of approximately five feet above mean sea level (msl).

Approximately 13 to 37 feet of fill material underlays the Development Area, some of which may contain rubble and debris from the 1906 San Francisco earthquake and resulting fire. Beneath the fill is approximately 46 to 72 feet of compressible clay or "Bay Mud," under which is approximately 68 to 74 feet of medium stiff to stiff clay, or "Old Bay Clay." In some areas, dense to very dense sand layers are present beneath the Old Bay Clay. Bedrock is present at approximately 160 to 260 feet below ground surface (bgs).

Groundwater is anticipated to be present beneath the Development Area at depths of approximately seven to nine feet bgs, and due to proximity to San Francisco Bay, is likely to be tidally influenced.

1.5 Land Use Covenants for the Former H&H Facility

Two separate land use covenants (LUCs), or deed restrictions, address the Former H&H Facility within the Development Area:

The Former H&H Facility has been regulated by the DTSC since 1978. The 2000 LUC (which was superseded by the 2019 Amended LUC) did not allow the 1.8 acre 2000 LUC Area to be used for single family homes, hospitals, schools, or day care facilities, or for recreational uses with direct contact with soils.

In approving the 2019 Amended LUC, DTSC relied upon the Ramboll 2019 Updated Human Health Risk Assessment (Updated HHRA) and its recommendations. The Updated HHRA recommended that future building construction on the Site incorporate vapor intrusion mitigation systems (VIMS) to mitigate potential vapor intrusion risks to future occupants unless additional media sampling demonstrates that there is no unacceptable risk to future occupants via the vapor intrusion pathway. In addition, the Updated HHRA further recommended that, as part of the development plans, capping materials such as hardscape, streets, foundations, and imported clean fill will be placed over existing soil to prevent direct contact with the existing soil. Based on the implementation of these additional mitigation measures, the 2019 Amended LUC now allows residential, day care, and outdoor recreational uses provided that residential uses are not on the first floor, that all uses are separated from the existing soil by a capping material, and that no buildings be built without an engineered VIMS approved in advance by the DTSC subject to the further sampling caveat identified above. The Updated HHRA is further detailed in Section 1.5.2, below.

The 2002 LUC Area is currently occupied by China Basin Park and is subject to the 2002 LUC covering 0.6 acres of the northern-most portion of the Development Area, which was formerly occupied by H&H's treatment and transfer area. The 2002 LUC allows use of the subject area as a park, provided that specified conditions on future construction are met. China Basin Park consists of green space with ballpark and water views and the "Junior

Giants Baseball Field.” The area was determined to be acceptable under DTSC and SFDPH standards for development of China Basin Park and no changes to the 2002 LUC are necessary based on current Development Area plans that incorporate the current park.

1.5.1 Phase I and Phase II Environmental Site Assessments (ESAs)

Phase I ESAs were conducted by ERM-West (ERM) and Langan Engineering and Environmental Services, Inc. (Langan) on all or portions of the Development in 1994 and 2018, respectively. The presence of fill material containing low levels of petroleum hydrocarbons, volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and heavy metals was noted as a recognized environmental condition (REC) in Langan’s Phase I.

ERM conducted a Phase II ESA in 1995 and 1996 that included soil sampling. The results of the soil sampling are not available for review.

1.5.2 Updated Risk Assessment (for the 1.8 acre portion of the Former H&H Facility – the 2000 LUC Area)

A baseline risk assessment was conducted in 1999 by Harding Lawson Associates (HLA) based on the results of the soil and groundwater sampling at the H&H TTA and service yard. Geomatrix also conducted sampling across the site and presented a risk evaluation in 1999. The assessments concluded that the calculated non-cancer hazards and cancer risk levels did not pose a threat to any of the human (and in the case of the HLA report, biological) receptors.

In June 2019, Ramboll submitted the Updated HHRA for the Site to the DTSC. The Updated HHRA was based on data from the soil and groundwater sampling conducted by HLA in 1999. The following steps were recommended to be undertaken as part of the redevelopment of the Site, and were incorporated as requirements in the 2019 Amended LUC:

- Except as stated below, future construction of buildings at the Site (i.e., Blocks F, G, K and J) will incorporate VIMS to mitigate the potential risks of vapor intrusion to future Site occupants. VIMS details will be submitted in a subsequent design document for review/approval by DTSC.
- Absent further sampling, the VIMS design described above will be proposed to DTSC and (with DTSC approval) installed at the time of construction. However, if, prior to development, the Owner or Developer conducts additional sampling and DTSC concurs with the findings that the then-current concentrations do not pose an unacceptable risk to future occupants via the vapor intrusion pathway under both the residential and commercial scenarios, then the need for a VIMS beneath one or more future buildings may be reevaluated in consultation with DTSC.
- Future earth-disturbing activities associated with the redevelopment will be performed in accordance with an SMP, which will be submitted to the DTSC for approval prior to implementation. The SMP will include measures to mitigate potential risks to construction workers. The updated LUC will also describe measures to eliminate direct contact exposure to future Site occupants.

1.6 Known Contaminants of Potential Concern (COPCs)

Sampling conducted at the 2000 LUC Area, the 2002 LUC Area, and the remaining portions of the Development Area has identified a variety of chemicals that may be encountered in soil (fill material) that is affected by redevelopment activities, including petroleum hydrocarbons, VOCs, PAHs, and heavy metals such as arsenic and lead. In addition, it is possible that the fill material historically placed at the Site may contain naturally-occurring asbestos depending on the origin of the fill (e.g., native serpentinite bedrock present in some areas of San Francisco).

Groundwater is approximately 7 to 9 feet bgs and dewatering is expected to take place on an as-needed basis during excavation activities. Given the depth of groundwater and the anticipated dewatering activities as well as health and safety and personal protective measures outlined in Section 2, it is not anticipated that construction workers will come into direct contact with groundwater.

1.7 Planned Site Redevelopment

Plans for the Development Area consist of commercial, retail, and residential developments, as well as parks and open space, as shown on Figure 2, with individual buildings designated as Blocks A through K. Development plans specify that all residential uses will be on the second floor and above in the future buildings. No residential use at the ground level is anticipated; blocks designated for residential use will have non-residential ground level uses such as retail/commercial, restaurants, tenant amenity spaces, day care, and storage. The building blocks will be separated by roadways and open space as indicated in Figures 2 and 3. Key characteristics of the development plans include the following:

- Redevelopment is anticipated to include the addition of a minimum of two feet of clean fill in areas of open space and landscaping, with the remainder of the Development Area covered by pavement, sidewalks, hardscape, or building foundations. Street and building floor slab elevations will be raised up to approximately five feet above the existing surface grade to account for anticipated future sea level rise;
- First floor will be limited to commercial use (i.e., residential use will be limited to the second floor and above); and
- Drinking water will be provided by the San Francisco Public Utilities Commission and use of on-site groundwater will be prohibited.

2. WORKER HEALTH AND SAFETY REQUIREMENTS

The Responsible Entity and its Contractor² will be responsible for establishing and maintaining its own appropriate health and safety procedures to minimize worker and public exposure to Site contaminants during construction. These procedures will be documented in a Site-specific Health and Safety Plan (HASP), which will be prepared prior to beginning intrusive Site redevelopment activities.

The components of the Contractor's HASP shall be consistent with all applicable California Occupational Safety and Health Administration (Cal/OSHA) standards and currently available toxicological information. The Contractor and its subcontractors will assure that on-Site construction workers have the appropriate level of health and safety training and use the appropriate level of personal protective equipment, as determined in the HASP based upon the evaluated job hazards and relevant monitoring results. To the extent that any construction activities may constitute "clean-up operations" or "hazardous substance removal work" as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response (HAZWOPER), 8 Cal. Code Reg. § 5192, Contractor will assure that on-Site personnel conducting such activities, who may contact chemicals in soil have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards ("HAZWOPER-trained personnel"). Soil that is visibly stained, discolored, shiny, or oily, or has a noticeable odor, will be handled only by such HAZWOPER-trained personnel until the Environmental Professional(s) (personnel to be determined by the Responsible Entity and/or Contractor; for the purposes of the initial development,) evaluates the situation (see Section 3) to understand whether the soil contains unacceptable concentrations of contaminants.

2.1 Site Specific Health and Safe Plan Components

The required components of the HASP are outlined below. The HASP should be tailored to current Site conditions, current occupational safety and health standards, and task-specific activities then known to the preparer of the HASP.

2.1.1 Key Personnel/Health and Safety Responsibilities

This section of the HASP will identify the Contractor's key personnel by name and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the Site. The Contractor will provide its employees who will potentially contact soil or previously unidentified soil contamination a copy of the HASP and brief its employees as to its contents. The health and safety responsibilities of each individual worker will be described in this section of the HASP.

2.1.2 Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with soil or previously unidentified contamination will be presented in this section of the HASP. The hazards that will be discussed include, at a minimum, chemical, temperature, and explosion hazards, if applicable. As part of the job hazard analysis, the HASP will identify the chemicals likely to be encountered during the

² For the initial major phases of redevelopment, the general contractor is anticipated to be Granite Construction, Inc.

construction activities and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit [PEL]). The procedures to mitigate the hazards identified in the job hazard analysis will also be presented in this section of the HASP. The use of appropriate Personal Protective Equipment (PPE) will likely be the principal mitigation procedure.

2.1.3 Personal Protective Equipment

This section of the HASP will identify the PPE that will be used to protect workers from the identified COPCs present in soil. Personal Protective Equipment will be selected based on the COPCs identified at the work site, and the known route(s) of entry into the human body. The primary exposure routes include direct contact with soil and inhalation of dust.

Although considered unlikely, certain construction activities, such as the installation of deep utility trenches or foundations, could result in workers coming into direct contact with groundwater. This contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavations. In the event that excavations are conducted in areas and groundwater is encountered, the HASP will identify any additional PPE required to minimize direct contact with COPCs in water, including water repellent gloves and boots.

2.1.4 Work Zones and Site Security Measures

This section of the HASP will identify the specific work zones of the construction site and describe the site security measures, such as the placement of barricades, fencing, access control, and access logs. All workers within the work zone, who will have direct contact with soil, will perform the work in compliance with relevant aspects of the HASP. The support zone will be located outside of the work zone, but within the boundaries of the construction site. All end-of-the day cleanup operations, such as cleaning of truck wheels (for vehicles exiting the construction site that could be tracking contaminated soils off Site), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the construction site. The entire construction site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

2.1.5 Decontamination Measures

This section of the HASP will describe the specific procedures that will be used to decontaminate both equipment and personnel that have been performing work in direct contact with soil. Decontamination measures will include cleaning the wheels of all vehicles that have been in contact with soil in the support zone prior to their exiting the Site. Additionally, workers will be required to remove any contaminated PPE and place it in a designated area in the support zone prior to leaving the Site.

2.1.6 General Safe Work Practices

This section of the HASP will discuss the general safe work practices to be followed at the construction site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, precautions near heavy equipment, confined space entry, and any special precautions that may be specific to the construction site and construction worker.

2.1.7 Contingency Plans/Emergency Information

This section of the HASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash stations, first aid kits, and fire extinguishers will be presented, and emergency telephone numbers and contacts will be identified. A map indicating the route to the nearest hospital will also be provided in this section of the HASP.

2.1.8 Medical Surveillance

This section of the HASP will describe medical surveillance that would be required for certain workers. To the extent that any construction activities may constitute “clean-up operations” or “hazardous substance removal work” as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, 8 Cal. Code Reg. § 5192, each construction Contractor will assure that its on-site personnel conducting such activities have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards (“HAZWOPER-trained personnel”).

2.1.9 Construction Safety Measures

These procedures include construction safety measures for excavations and require preparation of activity hazard analyses.

3. SOIL AND GROUNDWATER MANAGEMENT DURING EXCAVATION AND GRADING

To mitigate potential concerns related to contact with soil that may be contaminated during future grading at the Site, soil management procedures are described below.

3.1 Dust Control

At the request of SFDPH, a separate Dust Control Plan (DCP) has been prepared for redevelopment activities at the Site (an original draft of this document included both elements of the SMP and DCP), and is being issued in parallel to this SMP. An Asbestos Dust Mitigation Plan (ADMP) developed in accordance with Bay Area Air Quality Management District (BAAQMD) requirements has also been prepared under separate cover.

Dust control measures will be implemented during construction activities at the Site to minimize the generation of dust. It is particularly important to minimize the exposure of on-Site construction workers to dust and to prevent dust from migrating off Site. Dust generation may be associated with concrete foundation slab and paving removal and processing (including potential concrete grinding for reuse at the Site), excavation and grading activities, truck traffic, ambient wind traversing soil stockpiles, loading of transportation vehicles, and other earthwork.

3.2 Procedures for Soil Inspection and Notifications

During grading and excavation activities, potentially contaminated soil may be identified via observation of any of the following characteristics:

- Presence of free product. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on soil or water.
- Oily or other staining. Oily staining is not consistent in appearance, but often has a black, dark gray, dark brown, or greenish hue. Other unusual staining or soil discoloration (e.g., blue soils) should also be considered potential evidence of contamination.
- Petroleum or Chemical Odor. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered. If odorous soil or debris is encountered, the material may be contaminated and should be evaluated as soon as possible by field screening with a PID and, if warranted based on the field screening results, sampling for laboratory analysis. Areas exhibiting elevated PID readings above health and safety action levels should not be entered until laboratory data is available to evaluate potential health risks.
- Presence of Elevated Metals. Elevated metals in soil may be identified by strong and sometimes bright discoloration. Any chemical or metal odor should be noted regardless of whether a visible sign of elevated metals is encountered.
- Presence of Waste Debris. If debris such as concrete, scrap metal, bricks or other garbage is identified, the debris and surrounding soil may be contaminated.

- Presence of serpentine-containing fill materials or base rock. If dark gray or greenish serpentine rock (potentially having white fibrous inclusions) is identified, the fill material may potentially contain naturally-occurring asbestos (NOA).

Evaluation of whether soil is potentially contaminated should include input from the Environmental Professional(s) (for the initial redevelopment phase, these personnel are listed in Attachment 1).

Upon identification and confirmation that soil is potentially contaminated, the following actions should immediately be taken:

1. Stop work in the area of impact.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. Complete the Field Reporting Form (Attachment 2) (see Section 3.2.1 for further information relating to documentation).
4. Contain the impacted material, as instructed (see Section 3.2.2 for additional information relating to containment of potentially impacted material).
5. Work should not resume within the area of potential impact until clearance is received from the Environmental Professional.

A copy of this SMP will be kept in project construction trailers (or office, as appropriate) for reference and use in the event that potentially contaminated soil is encountered.

3.2.1 Documentation

In the event potentially contaminated soil and material are encountered during construction activities, information regarding the characteristics, location, and extent of the soil and material impacts must be collected. This information should be documented as follows:

- The approximate location (marked on a site map).
- Extent of potential contamination (How large an area of impacts has been identified?).
- What indications of potential impacts were observed (Odor? Discoloration? Free product? Waste material?).
- Is groundwater or a surface water body (surface puddles not included) impacted (sheen or product on water surface?).
- If possible, take photographs.

3.2.2 Containment

If instructed to do so, the reporting individual should work with the Contractor to contain the potentially-impacted soil and material. The Environmental Professional(s) will evaluate whether potentially-impacted soil and material should be contained based on information provided. The purpose of containment is to ensure that potentially impacted soil does not spread to other portions of the Site or mobilize off Site in the event of rain.

Generally, containment will include one or more of the following steps:

- Relocation of impacted soils to a constructed containment cell created using an earthen berm lined with plastic sheeting. Soils placed within containment cells are subsequently covered with plastic sheeting that extends outside the cell and is sufficiently anchored to minimize exposure to wind and rain.
- Covering impacted soil and material with plastic sheeting and marking the area "Do Not Disturb."
- Placement of silt fencing around the area of potential impacts.
- In the event that free product is observed, applying oil dry or sorbent cloths to soak up oily material.

3.2.3 Site Investigation and Disposal of Impacted Soil

If necessary and as requested by the Responsible Entity, the Contractor, SFDPH, or DTSC, the Environmental Professional(s) will mobilize to the Site to further investigate the nature and extent of the potential contamination. Further investigation including sampling of the soil and/or excavation may be warranted depending on Site conditions.

If necessary, impacted soil will be transported off Site for appropriate disposal per Section 3.7.

3.2.4 Waste Segregation Operations

If soil is determined following laboratory analysis to contain COPCs and off-Site removal of the soil is required, such soil will be segregated and stockpiled in separate containment areas to prevent mixing with non-impacted soil. Soil stockpiles shall be documented (e.g., labeled, identified on a figure or map along with approximate volume estimates) by the Contractor and/or Responsible Entity. Any waste that is determined to be hazardous shall be managed, transported and disposed in accordance with applicable hazardous waste requirements under RCRA (e.g., 90-day limit on site). Information regarding transportation and disposal is presented in Section 3.7.

3.2.5 Decontamination Procedures

If soil containing COPCs is identified by the Contractor during excavation/grading activities, the Environmental Professional(s) will develop and oversee appropriate decontamination procedures for the field personnel and equipment that have come into contact with soil containing COPCs. Specific procedures may vary depending on the type of contamination that is identified.

3.3 Procedures for Groundwater Inspection and Reporting

Based on anticipated depth to groundwater and implementation of localized construction dewatering, it is not expected that grading and excavation work up to five and six feet bgs will encounter groundwater. It is expected that localized dewatering will take place for excavations that are deep enough to encounter groundwater (e.g., future roadways). Construction dewatering via temporary wells will be discharged to the sanitary sewer (with the approval of the San Francisco PUC) or to San Francisco Bay (with the approval of the San Francisco Bay Regional Water Quality Control Board [SFRWQCB] under a National Pollutant Discharge Elimination System [NPDES] permit). Under either discharge scenario, groundwater sample(s) will be collected and analyzed in order to obtain discharge approval. Discharge requirements are project specific and are not specified by this document.

If encountered during excavation, to identify if groundwater is impacted by contaminants, the Responsible Entity, Contractor and/or Environmental Professional will first evaluate whether the soil in the immediate proximity is impacted (see Section 3.2), via field observations such as the following:

- *Presence of Free Product*. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on top of water.
- *Presence of Chemical Odor*. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered.

Such groundwater will be initially segregated by pumping into appropriate containers for permitted discharge or off-site transport for disposal (Section 3.7). Upon characterization, disposal may be via discharge to the on-site dewatering treatment system (if acceptable), or transported off site. The procedures for notification and reporting of impacted groundwater are the same as those prescribed for soil, as detailed in Section 3.2.

Discharge of water generated during large-scale construction activities to surface waters will be performed under a state-specific NPDES permit or under the requirements of the local permitting authority (e.g., municipal wastewater agency). Prior to any large site redevelopment (i.e. greater than one acre), a SWPPP must be developed. The SWPPP must comply with the requirements of the applicable state and/or local environmental agency.

3.4 Management of Buried Drums, Tanks or Abandoned Pipes

If buried drums, USTs, underground hydraulic lifts, or abandoned pipes are encountered during construction, the following actions should immediately be taken:

1. Stop work in the area where the buried drums, tanks and/or pipelines were identified.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. The Contractor or the Environmental Professional(s) should notify the appropriate local, state, and/or federal agency of the discovery if required by applicable regulations. Removal permits may be required for certain features (e.g., USTs, hydraulic lifts).
4. Mark the location on a site map and take photographs if possible.

If potentially contaminated soil is co-located with the drums, tank and/or pipes, then the procedures identified in Section 3.2 with respect to the potentially contaminated soil should be implemented.

3.4.1 Buried Drum Removal

Buried drums and their contents shall be removed from the excavation. The drums and contents should be placed in a sealed bin or bermed area that is covered with visqueen or other material to prevent discharge to soil or the atmosphere. Drum contents shall be characterized by the Environmental Professional(s) in accordance with hazardous waste laws and regulations and profiled for off-site disposal as required by the disposal facility. Following characterization, drums and contents shall be transported off site for disposal at an authorized facility in accordance with applicable laws and regulations.

3.4.2 Tank and/or Pipeline Removal

If USTs and associated piping systems are discovered during grading and excavation activities, removal shall be performed under appropriate permits and agency oversight. Collection of soil samples is likely to be required, and the Contractor performing the removal shall prepare or provide the Environmental Professional(s) with appropriate information with which to prepare a UST removal report.

3.5 Spills

In the event of a release of equipment fuel or other chemical, the Contractor will take the following actions, using appropriately trained personnel and appropriate personal protective equipment (PPE) as defined by the Contractor's health and safety plan:

Immediately clean up the spill to the extent possible

- If possible and appropriate for the situation, place containers under leaking equipment or damaged equipment or containers on secondary containment.
- Spills onto hard surfaces can be cleaned up by applying sorbent cloths or quick-dry material to the spill and subsequently containerizing the sorbent material in a rain-proof container, such as a 55-gallon drum.
- Spills onto soil can be cleaned up by excavating impacted soils and placing them into rain-proof containers or by creating a bermed, plastic-lined area to contain the impacted soils (see Section 3.2.2).

Report the Spill

- As soon as possible, following initial spill cleanup, contact the individuals identified in Attachment 1 to report the spill. In addition, the Environmental Professional(s) after consultation with the Responsible Entity or Contractor (as appropriate) should notify the appropriate local, state, and/or federal agencies of the spill if required by applicable laws or regulations.

Document the Spill

- Once initial spill response has been conducted, complete the Spill Reporting Form included as Attachment 3 and provide copies of the completed form to the individuals identified in Attachment 1. If possible, take photographs of the spill, spill area, and/or spill response activities.

Final Reporting

- Following cleanup of the spill, the Environmental Professional(s) will, if requested by Responsible Entity and/or required by applicable laws or regulations, report the results of cleanup activities to the appropriate agencies.

Obtain Approval Before Resuming Work

- Approval should be obtained from the Environmental Professional(s) before resuming work within the potentially affected area of the Site.

3.6 Notification of Discovery

If determined to be required and/or necessary and at the request of and on behalf of the Responsible Entity or Contractor, the Environmental Professional(s) will make the

appropriate notifications and report environmental findings to relevant agencies. Examples of such reportable findings may include discovery of significant impacts, free product, USTs, drums, or other subsurface features indicative of a known or potential release to the subsurface.

3.7 Off-Site Disposal

Soil that will be removed from the Site for off-site disposal will be characterized prior to transportation off site. Soil samples representative of the volume to be transported off site will be collected in-situ and/or from stockpiles and characterized using an analytical program developed in consideration of off-site disposal facility or third party acceptance requirements, and the DTSC's Information Advisory on Clean Imported Fill Material (Attachment 4). The soil to be off-hauled will be accepted by the disposal facility or third party prior to being removed from the Site.

All water to be removed from the Site, including excavation dewatering, storm water and vehicle wash water will be handled, and if necessary, transported and disposed in accordance with applicable local, state and federal regulations. Contaminated water will not be discharged to the land surface or subsurface of the Site. If encountered, impacted groundwater may be stored on Site temporarily pending characterization and disposal via transport to an off-site disposal facility, or via permitted discharge. Discharge to the sanitary sewer system is typically subject to the requirements of the local permitting authority (e.g., municipal wastewater agency), and depending on available characterization data, the agency may require additional sampling, on-site pre-treatment, and/or specify other limitations or conditions.

The Contractor, on behalf of the Responsible Entity, will arrange for transportation of all wastes off site using a permitted, licensed, and insured transportation company, and will be responsible for tracking final soil dispositions at appropriate disposal facilities. The Contractor must obtain approval from the Responsible Entity when identifying a potential disposal facility. Any soil considered Federal Resource Conservation and Recovery Act (RCRA) or California (non-RCRA) hazardous waste (hazardous waste) will be tracked using the Uniform Hazardous Waste Manifest System (USEPA Form 8700-22), as applicable. An appropriate USEPA Generator Identification Number will be recorded on the hazardous waste manifests used to document transport of hazardous waste off site. The hazardous waste transporter, disposal facility, and U.S. Department of Transportation (DOT) waste description required for each manifest will be determined on a case-by-case basis. Soil not considered hazardous waste will be tracked using non-hazardous bills of lading. These two systems will be used to comply with appropriate federal, state, and local requirements.

The Contractor will be responsible for accurate completion of the hazardous waste manifests and non-hazardous bills of lading. Records of all wastes shipped off site, including manifests and bills of lading, will be maintained by the Contractor and will be provided to the Environmental Professional(s) within a reasonable time, as they are generated, and included in the completion summary or report prepared at the conclusion of the project.

3.8 On-Site Soil Reuse

During initial redevelopment, soil on Site may be moved within site boundaries, and re-used without need for sampling, provided the soil is not obviously impacted (e.g., based on visual

or olfactory observations noted above), and is not generated in close proximity (i.e., within 20 feet) of impacted areas. The Environmental Professional shall be consulted and provide approval prior to reusing soil on Site. An on-site inspection by the Environmental Professional may be required.

As noted in Section 1, LUC areas are required to ensure that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing “native” soil.

Following completion of initial construction activities and within the boundaries of the LUC areas, soil that is impacted (or generated from areas in close proximity as described above), located beneath hardscaped areas, or located beneath the demarcation layer may not be re-used on site.

If sampling is conducted and soil is proposed for on-site reuse, sample data will be compared to then-current regulatory screening criteria appropriate for the proposed area of reuse (e.g., residential or commercial land use criteria such as DTSC Screening Levels [SLs], USEPA Regional Screening Levels [RSLs], or SFRWQCB Environmental Screening Levels [ESLs]). Soil that meets residential screening criteria may be reused without restriction, except for in the LUC areas as described above. Because health risk based screening criteria for arsenic are typically well below concentrations typically found in native soil in the Bay Area, the comparison criterion for arsenic will be 11 milligrams per kilogram (mg/kg), which is considered representative of typical Bay Area background concentrations (Duvergé, 2011).

3.9 Import Fill

No backfilling of an area containing potentially contaminated soil will be conducted without prior approval from the Environmental Professional(s).

Evaluation of any imported fill soil for the presence of contaminants must be concluded prior to consideration for use at the site (e.g. as backfill for excavations or trenching, or for raising site elevations). Unless from a documented “clean” import fill source such as a quarry, import fill will be evaluated to confirm the absence of chemical contaminants in accordance with the DTSC Information Advisory on Clean Imported Fill Material (Attachment 4).

Requirements for soil generated on Site that is proposed for re-use are outlined above.

Import fill data will be compared to DTSC SLs, USEPA RSLs, or SFRWQCB Environmental Screening Levels based on direct exposure and and/or vapor intrusion concerns, whichever is more stringent. As noted above, the comparison criterion for arsenic will be 11 mg/kg.

If the source location for the import fill cannot provide appropriate documentation acceptable to the Responsible Entity, Owner, and/or Environmental Professional(s) (e.g., data demonstrating that the soil does not contain unacceptable concentrations of contaminants), evaluation of the material should be conducted before it is transported and placed at the site. Information regarding import fill will be included in the completion summary or report prepared at the conclusion of the project.

3.10 Mission Bay RMP Requirements Summary (Applicable to Parcel 20)

Work conducted along the southern boundary of the Site (Mission Bay Parcel 20) shall be conducted in accordance with the Mission Bay RMP. The RMP for Mission Bay was prepared

in 1999 and provides specific protocols for managing chemicals in soil and groundwater in a manner that is protective of human health and the environment. The RMP was approved by the SFRWQCB with significant input from the DTSC and the SFDPH. Initially, the SFRWQCB was designated as lead agency for the Mission Bay Redevelopment Area, a responsibility that the agency passed to the SFDPH in approximately 2017.

The RMP delineates the specific risk management measures that must be implemented prior to, during, and after development of each parcel within the Mission Bay Redevelopment Area. Text of the Mission Bay RMP is included as Attachment 5 of this document; notification and reporting requirements (generally outlined in Sections 3 through 5 of the RMP) include a pre-work notification of plans for earth work, quarterly reporting regarding dust control activities, soil stockpile inspections and any new discoveries (e.g., USTs), a final completion report, and annual inspections. Many of these requirements overlap with the procedures outlined in this SMP.

3.11 Reporting

A Completion Report shall be prepared by the Responsible Entity following completion of activities covered by this SMP, in accordance with SFDPH requirements and the Maher Ordinance. The report shall describe SMP implementation, including a description and chronology of events, summary of any new analytical data collected, documentation regarding off-site disposal, and other backup information (e.g., figures, data tables, lab reports, hazardous waste manifests). The document will also be used to satisfy completion requirements for the portion of the site subject to the Mission Bay RMP.

In addition, in accordance with the 2019 Amended LUC, the Owner or Owner's designee shall conduct an annual inspection of the portion of the site to which the 2019 Amended LUC applies, verifying compliance with the LUC and shall submit an annual inspection report to the Department for its approval by January 30th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the annual inspection identifies any violations of the 2000/2019 LUC during the annual inspection or at any other time, the Owner or Owner's designee must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the LUC; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of the LUC shall be sent to the DTSC within 10 calendar days of its original transmission.

3.12 Future SMP Modifications

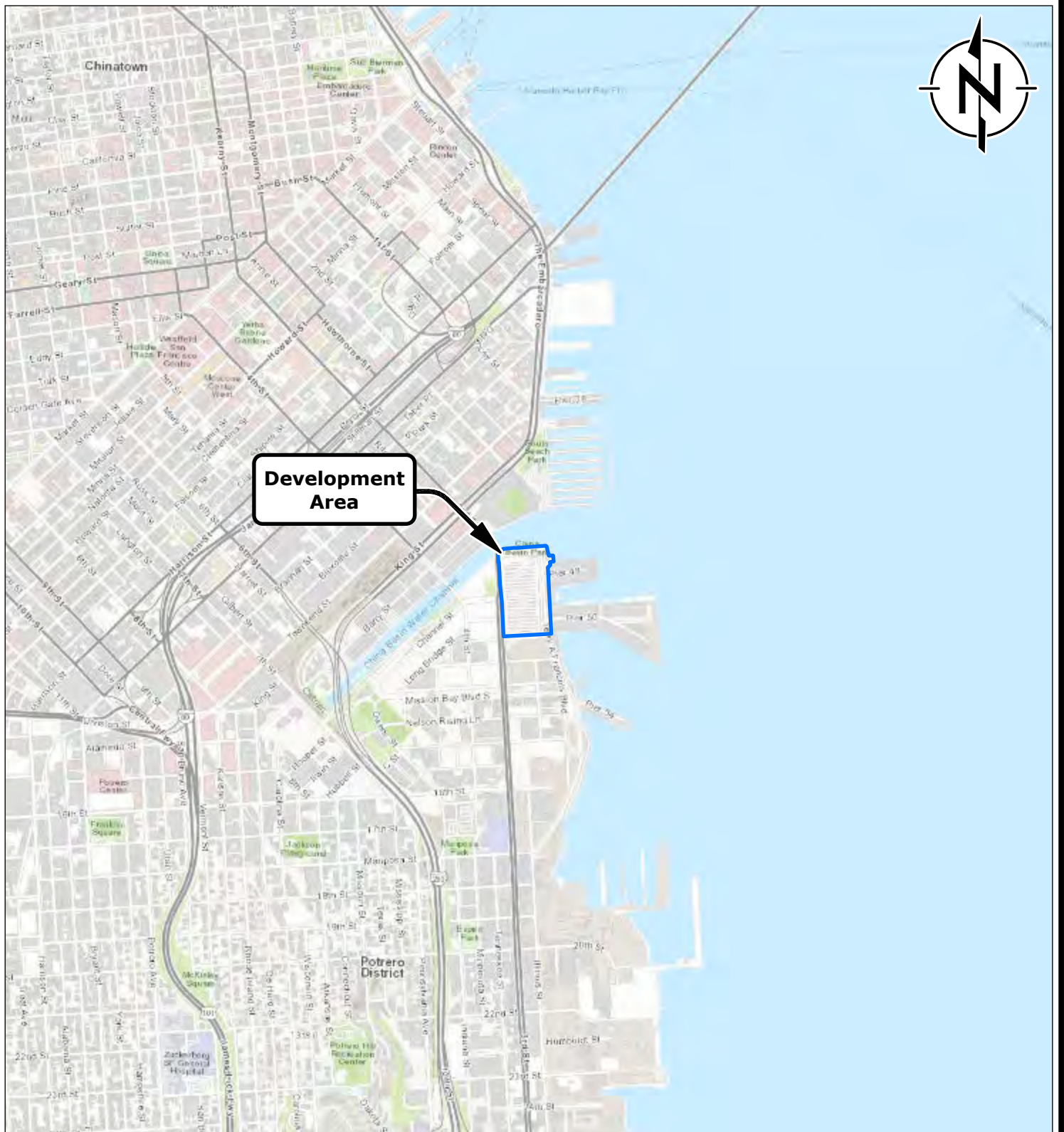
As redevelopment progresses, this SMP may require updates or modifications to accommodate changes in Site conditions or redevelopment plans, or to address localized issues that may arise during construction activities. Such requests for modification will be included in an SMP amendment, and (as warranted) submitted to SFDPH (and DTSC, if pertinent to a LUC Area) for review and approval.

4. REFERENCES


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- Geomatrix. 1999. Results of Article 20 Sampling Program and Health Risk Assessment. Imperial Weitz Parking Lots for the Giants Pacific Bell Ball Park, Area E – Port of San Francisco Property, South of China Basin Channel, San Francisco, California. June.
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- Ramboll US Corporation. 2019. Dust Control Plan, Mission Rock Development, San Francisco, California. October 18.
- San Francisco Bay Regional Water Quality Control Board (SFBRWQB). 2019. Environmental Screening Levels (ESLs). January.
- United States Environmental Protection Agency (USEPA). 2016. Particulate Matter (PM) Standards - NAAQS website. Available online at <https://www.epa.gov/criteria-air-pollutants/naaqs-table>. Accessed August 2019.

FIGURES

C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 1 - Site Location Map



Legend

 Development Area

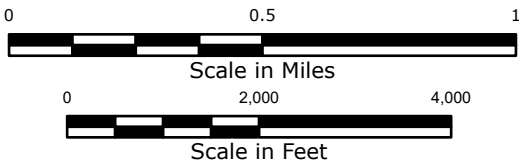
SOURCE:

The National Map, 2018.

Map Scale: 1: 1:24,000

Spatial Reference

Name: NAD 1983 StatePlane California III FIPS 0403 Feet; Map Center:



KEY MAP



Project Location Map
Mission Rock Development Area
San Francisco, California

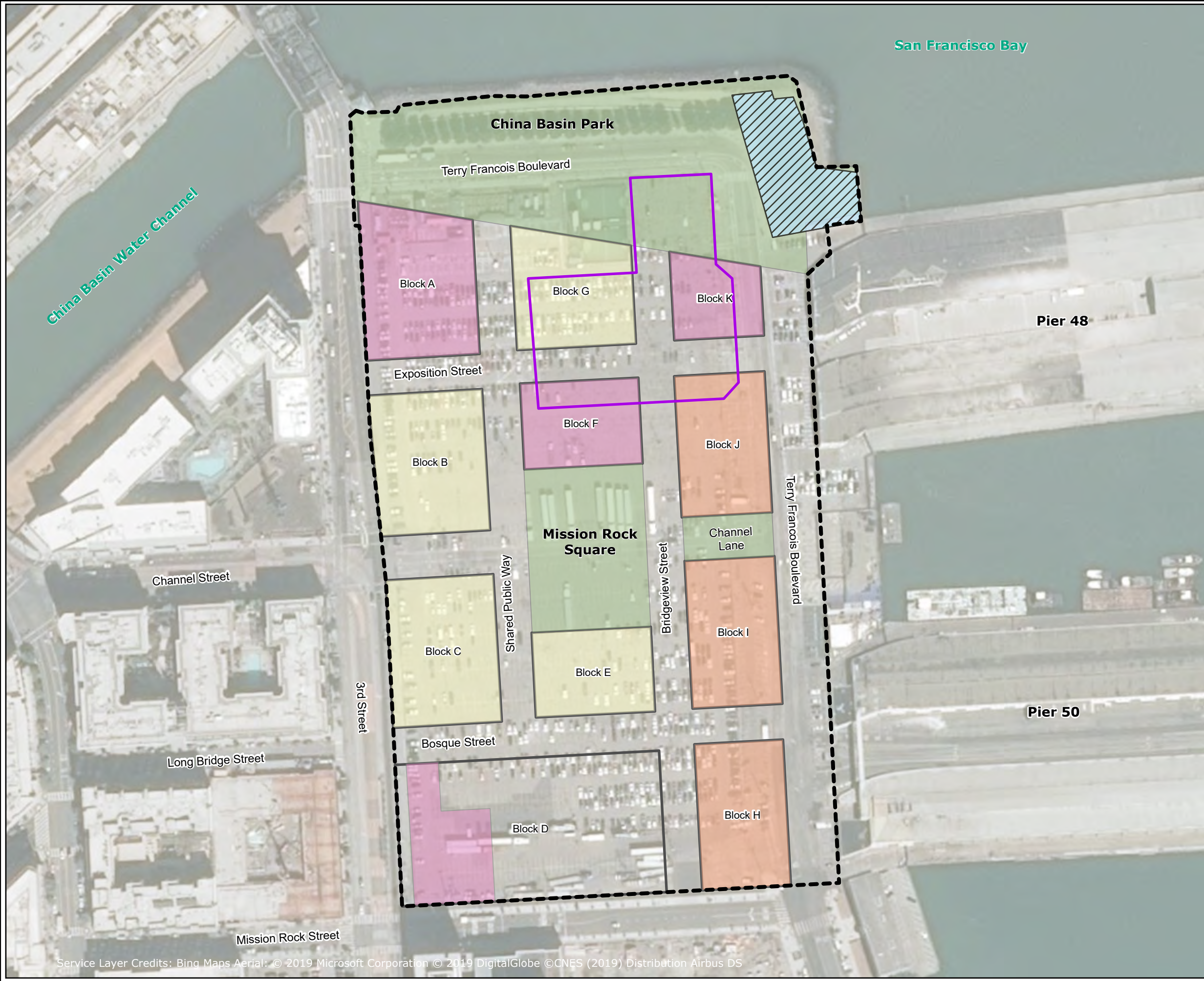
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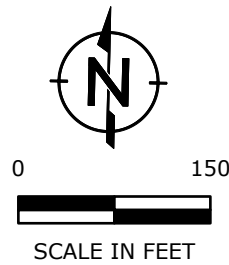
PROJECT: 1690001737

C:\Users\rebeccasea\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 2 - Site Plan



Service Layer Credits: Bing Maps Aerial: © 2019 Microsoft Corporation © 2019 DigitalGlobe ©CNES (2019) Distribution Airbus DS

- Legend**
- Development Boundary
 - Site Boundary
 - 2002 LUC Area (approximate)
 - Proposed Land Use
 - Commercial
 - Open Space
 - Residential
 - Flex Residential/Commercial
 - Block Boundary



Project Layout		
Mission Rock Development Area San Francisco, California		
RAMBOLL		FIGURE 2
DRAFTED BY: REBECCACASE	DATE: 7/17/2019	PROJECT: 1690001737

ATTACHMENT 1
CONTACT INFORMATION FOR NOTIFICATION

NOTIFICATION INFORMATION (UPDATE AS NEEDED)

Name (Entity)	Responsibilities	Contact Details
Steve Minden (Tishman Speyer)	Responsible Entity Representative	O: (415) 536 1850 C: (213) 458 1272 SMinden@TishmanSpeyer.com
To Be Determined	Contractor Representative	O: C:
Nick Walchuk, PG (Ramboll)	Environmental Professional	O: (510) 420-2559 C: (510) 847-5905 nwalchuk@ramboll.com

ATTACHMENT 2
FIELD REPORT FORM

Field Reporting Form – Potentially Contaminated Soil		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional(s)		
Soil Information		
Describe the potentially-impacted material (e.g. discoloration/staining, odor, oily sheen, presence of free flowing or floating oil/petroleum, serpentine-containing fill material, etc.)		
Estimated Extent of Potentially Impacted Soil (ft) (horizontal and vertical):		
<ul style="list-style-type: none"> Estimated horizontal extent (in feet): Estimated depth below ground surface (in feet): 		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Groundwater and Surface Water Information		
If impacts were discovered while excavating, was water encountered? YES / NO		
If groundwater was encountered, was any sheen or oil visible on the surface of the water? YES / NO		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

ATTACHMENT 3
SPILL REPORTING FORM

Spill Reporting Form		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional		
Spill Information		
What kind of material was spilled?		
What is the estimated volume of material spilled (in gallons)?		
Was the material spilled on a paved (asphalt/concrete) surface or on bare ground?		
Did any of the spilled material enter storm water or sewer drains, enter drainage ditches, or leave the site?		
Estimated Extent of the spill-affected area: <ul style="list-style-type: none"> • Estimated horizontal extent (in feet): • Estimated depth below ground surface (in feet): 		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

ATTACHMENT 4
DTSC'S INFORMATION ADVISORY
ON CLEAN IMPORTED FILL MATERIAL

October 2001

Information Advisory

Clean Imported Fill Material



DEPARTMENT OF TOXIC SUBSTANCES CONTROL

It is DTSC's mission to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.

State of California



California
Environmental
Protection Agency



Executive Summary

This fact sheet has been prepared to ensure that inappropriate fill material is not introduced onto sensitive land use properties under the oversight of the DTSC or applicable regulatory authorities. Sensitive land use properties include those that contain facilities such as hospitals, homes, day care centers, and schools. This document only focuses on human health concerns and ecological issues are not addressed.

It identifies those types of land use activities that may be appropriate when determining whether a site may be used as a fill material source area. It also provides guidelines for the appropriate types of analyses that should be performed relative to the former land use, and for the number of samples that should be collected and analyzed based on the estimated volume of fill material that will need to be used. The information provided in this fact sheet is not regulatory in nature, rather is to be used as a guide, and in most situations the final decision as to the acceptability of fill material for a sensitive land use property is made on a case-by-case basis by the appropriate regulatory agency.

Introduction

The use of imported fill material has recently come under scrutiny because of the instances where contaminated soil has been brought onto an otherwise clean site. However, there are currently no established standards in the statutes or regulations that address environmental requirements for imported fill material. Therefore, the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has prepared this fact sheet to identify procedures that can be used to minimize the possibility of introducing contaminated soil onto a site that requires imported fill material. Such sites include those that are undergoing site remediation, corrective action, and closure activities overseen by DTSC or the appropriate regulatory agency. These procedures may also apply to construction projects that will result in sensitive land uses. The intent of this fact sheet is to protect people who live on or otherwise use a sensitive land use property. By using this fact sheet as a guide, the reader will minimize the chance of introducing fill material that may result in potential risk to human health or the environment at some future time.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.dtsc.ca.gov.

Overview

Both natural and manmade fill materials are used for a variety of purposes. Fill material properties are commonly controlled to meet the necessary site specific engineering specifications. Because most sites requiring fill material are located in or near urban areas, the fill materials are often obtained from construction projects that generate an excess of soil, and from demolition debris (asphalt, broken concrete, etc.). However, materials from those types of sites may or may not be appropriate, depending on the proposed use of the fill, and the quality of the assessment and/or mitigation measures, if necessary. Therefore, unless material from construction projects can be demonstrated to be free of contami-

nation and/or appropriate for the proposed use, the use of that material as fill should be avoided.

Selecting Fill Material

In general, the fill source area should be located in nonindustrial areas, and not from sites undergoing an environmental cleanup. Nonindustrial sites include those that were previously undeveloped, or used solely for residential or agricultural purposes. If the source is from an agricultural area, care should be taken to insure that the fill does not include former agricultural waste process byproducts such as manure or other decomposed organic material. Undesirable sources of fill material include industrial and/or commercial sites where hazardous ma-

Potential Contaminants Based on the Fill Source Area

Fill Source:	Target Compounds
Land near to an existing freeway	Lead (EPA methods 6010B or 7471A), PAHs (EPA method 8310)
Land near a mining area or rock quarry	Heavy Metals (EPA methods 6010B and 7471A), asbestos (polarized light microscopy), pH
Agricultural land	Pesticides (Organochlorine Pesticides: EPA method 8081A or 8080A; Organophosphorus Pesticides: EPA method 8141A; Chlorinated Herbicides: EPA method 8151A), heavy metals (EPA methods 6010B and 7471A)
Residential/acceptable commercial land	VOCs (EPA method 8021 or 8260B, as appropriate and combined with collection by EPA Method 5035), semi-VOCs (EPA method 8270C), TPH (modified EPA method 8015), PCBs (EPA method 8082 or 8080A), heavy metals including lead (EPA methods 6010B and 7471A), asbestos (OSHA Method ID-191)

**The recommended analyses should be performed in accordance with USEPA SW-846 methods (1996). Other possible analyses include Hexavalent Chromium: EPA method 7199*

Recommended Fill Material Sampling Schedule

Area of Individual Borrow Area	Sampling Requirements
2 acres or less	Minimum of 4 samples
2 to 4 acres	Minimum of 1 sample every 1/2 acre
4 to 10 acres	Minimum of 8 samples
Greater than 10 acres	Minimum of 8 locations with 4 subsamples per location
Volume of Borrow Area Stockpile	Samples per Volume
Up to 1,000 cubic yards	1 sample per 250 cubic yards
1,000 to 5,000 cubic yards	4 samples for first 1000 cubic yards + 1 sample per each additional 500 cubic yards
Greater than 5,000 cubic yards	12 samples for first 5,000 cubic yards + 1 sample per each additional 1,000 cubic yards

terials were used, handled or stored as part of the business operations, or unpaved parking areas where petroleum hydrocarbons could have been spilled or leaked into the soil. Undesirable commercial sites include former gasoline service stations, retail strip malls that contained dry cleaners or photographic processing facilities, paint stores, auto repair and/or painting facilities. Undesirable industrial facilities include metal processing shops, manufacturing facilities, aerospace facilities, oil refineries, waste treatment plants, etc. Alternatives to using fill from construction sites include the use of fill material obtained from a commercial supplier of fill material or from soil pits in rural or suburban areas. However, care should be taken to ensure that those materials are also uncontaminated.

Documentation and Analysis

In order to minimize the potential of introducing contaminated fill material onto a site, it is necessary

to verify through documentation that the fill source is appropriate and/or to have the fill material analyzed for potential contaminants based on the location and history of the source area. Fill documentation should include detailed information on the previous use of the land from where the fill is taken, whether an environmental site assessment was performed and its findings, and the results of any testing performed. It is recommended that any such documentation should be signed by an appropriately licensed (CA-registered) individual. If such documentation is not available or is inadequate, samples of the fill material should be chemically analyzed. Analysis of the fill material should be based on the source of the fill and knowledge of the prior land use.

Detectable amounts of compounds of concern within the fill material should be evaluated for risk in accordance with the DTSC Preliminary Endangerment Assessment (PEA) Guidance Manual. If

metal analyses are performed, only those metals (CAM 17 / Title 22) to which risk levels have been assigned need to be evaluated. At present, the DTSC is working to establish California Screening Levels (CSL) to determine whether some compounds of concern pose a risk. Until such time as these CSL values are established, DTSC recommends that the DTSC PEA Guidance Manual or an equivalent process be referenced. This guidance may include the Regional Water Quality Control Board's (RWQCB) guidelines for reuse of non-hazardous petroleum hydrocarbon contaminated soil as applied to Total Petroleum Hydrocarbons (TPH) only. The RWQCB guidelines should not be used for volatile organic compounds (VOCs) or semi-volatile organic compounds (SVOCS). In addition, a standard laboratory data package, including a summary of the QA/QC (Quality Assurance/Quality Control) sample results should also accompany all analytical reports.

When possible, representative samples should be collected at the borrow area while the potential fill material is still in place, and analyzed prior to removal from the borrow area. In addition to performing the appropriate analyses of the fill material, an appropriate number of samples should also be determined based on the approximate volume or area of soil to be used as fill material. The table above can be used as a guide to determine the number of samples needed to adequately characterize the fill material when sampled at the borrow site.

Alternative Sampling

A Phase I or PEA may be conducted prior to sampling to determine whether the borrow area may have been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with DTSC or appropriate regulatory agency. However, if it is not possible to analyze the fill material at the borrow area or determine that it is appropriate for use via a Phase I or PEA, it is recommended that one (1) sample per truckload be collected and analyzed for all com-

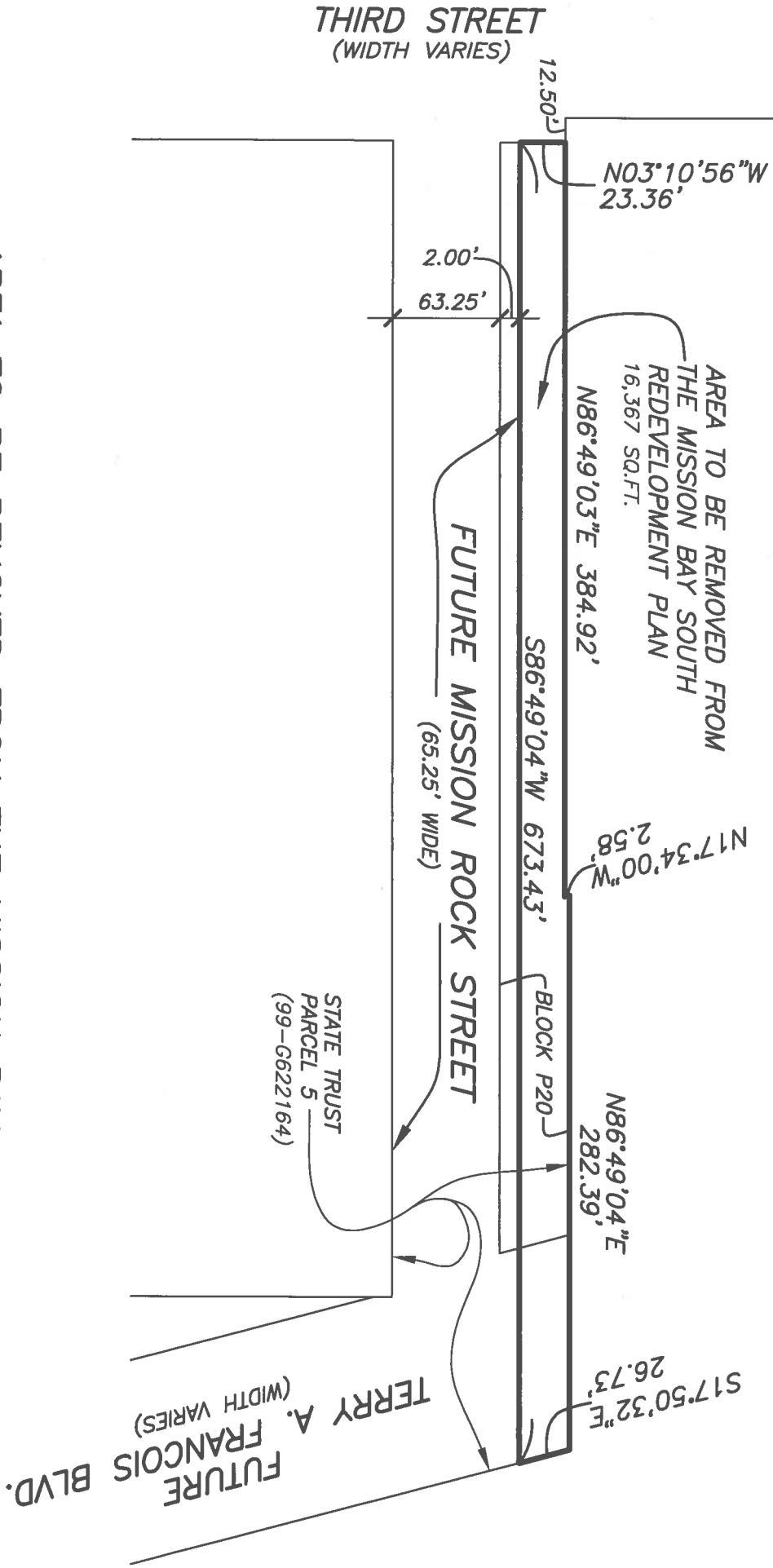
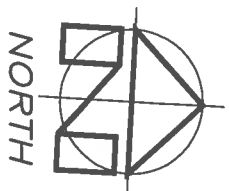
pounds of concern to ensure that the imported soil is uncontaminated and acceptable. (See chart on Potential Contaminants Based on the Fill Source Area for appropriate analyses). This sampling frequency may be modified upon consultation with the DTSC or appropriate regulatory agency if all of the fill material is derived from a common borrow area. However, fill material that is not characterized at the borrow area will need to be stockpiled either on or off-site until the analyses have been completed. In addition, should contaminants exceeding acceptance criteria be identified in the stockpiled fill material, that material will be deemed unacceptable and new fill material will need to be obtained, sampled and analyzed. Therefore, the DTSC recommends that all sampling and analyses should be completed prior to delivery to the site to ensure the soil is free of contamination, and to eliminate unnecessary transportation charges for unacceptable fill material.

Composite sampling for fill material characterization may or may not be appropriate, depending on quality and homogeneity of source/borrow area, and compounds of concern. Compositing samples for volatile and semivolatile constituents is not acceptable. Composite sampling for heavy metals, pesticides, herbicides or PAH's from unanalyzed stockpiled soil is also unacceptable, unless it is stockpiled at the borrow area and originates from the same source area. In addition, if samples are composited, they should be from the same soil layer, and not from different soil layers.

When very large volumes of fill material are anticipated, or when larger areas are being considered as borrow areas, the DTSC recommends that a Phase I or PEA be conducted on the area to ensure that the borrow area has not been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with the DTSC.

For further information, call Richard Coffman, Ph.D., R.G., at (818) 551-2175.

ATTACHMENT 5
EXCERPT: MISSION BAY RISK MANAGEMENT PLAN
APPLICABLE TO SOUTHERN SITE BOUNDARY ONLY



AREA TO BE REMOVED FROM THE MISSION BAY
SOUTH REDEVELOPMENT PLAN

BY JP CHKD. BR DATE 9/8/17 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229-MASTER LEASE
PROPERTY PLATS.dwg

**RISK MANAGEMENT PLAN
MISSION BAY AREA
SAN FRANCISCO, CALIFORNIA**

Submitted to:

California Regional Water Quality Control Board
San Francisco Bay Region

California Environmental Protection Agency
Department of Toxic Substances Control

Prepared by:

ENVIRON Corporation
Emeryville, CA

May 11, 1999
03-6381S

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GLOSSARY

ABAG	Association of Bay Area Governments
Agency	San Francisco Redevelopment Agency
BMP	Best Management Practices
BTEX	benzene, toluene, ethylbenzene and xylenes
Cal/EPA	California Environmental Protection Agency
City	City and County of San Francisco
DataRAM	Real-time dust monitoring instrument
Development	defined in Section 1.0
DTSC	Department of Toxic Substances Control
EHASP	Environmental Health and Safety Plan
Fill	defined in Section 4.3.5.5
Free Product	defined in Section 4.4
FSEIR	Final Subsequent Environmental Impact Report
General Permit	General Permit for discharge of stormwater from construction sites per SWRCB Order No. 92-08 DWQ, discussed in Section 4.3.3
HI	Hazard Index
ITL	Interim Target Level; defined in Section 3.1
Inorganics	Metals (identified in Appendix A), Asbestos, Fluoride and Sulfide
Interim Period	defined in Section 3.1
IRRM	Interim Risk Management Measures
Native Soils	defined in Section 1.0
NPDES	National Pollutant Discharge Elimination System
OVA	Organic Vapor Analyzer
OVN	Organic Vapor Meter
Owner	defined in Section 1.0
PAH	Polycyclic Aromatic Hydrocarbons
PCBs	Polychlorinated Biphenyls
PEL	Permissible Exposure Limit; defined in Section 4.3.8.2
PM ₁₀	Particulate Matter with aerodynamic diameter less than 10 microns
PPE	Personal Protective Equipment; defined in Section 4.3.8.2
Redevelopment Plans	defined in Section 1.0
RMP	Risk Management Plan
RMP Area	defined in Section 1.0
RWQCB	Regional Water Quality Control Board for the San Francisco Bay Region
SSTL	Site Specific Target Level; defined in Section 4.3.5.5.1
SVOC	Semivolatile organic compounds
SFDPH	San Francisco Department of Public Health
SFDPW	San Francisco Department of Public Works
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TPH-d	Total Petroleum Hydrocarbons, in the diesel range
TPH-g	Total Petroleum Hydrocarbons, in the gasoline range
TPH-mo	Total Petroleum Hydrocarbons, in the motor oil range

GLOSSARY (Continued)

UCL	Upper confidence limit
UCSF	University of California, San Francisco
USEPA	United States Environmental Protection Agency
UST	Underground Storage Tank
VOC	Volatile Organic Compound

3.0 RISK MANAGEMENT MEASURES PRIOR TO DEVELOPMENT

3.1 Introduction

The purpose of the following section is to describe the interim risk management measures (IRMM) that will be implemented to minimize potential impacts associated with the exposed Native Soils that may exist on parcels within the RMP Area during the Interim Period, which is defined for each parcel as the period of time between: (i) the date that the RMP is approved and the Environmental Covenant is recorded against the parcel and; (ii) the commencement of development of that parcel. These management measures apply to all parcels within the RMP Area before development of the parcel commences; the IRMMs are developed to be protective of populations on both the undeveloped parcel and on developed parcels that may be located directly adjacent to areas that have not been developed and therefore may contain exposed Native Soils. The IRMMs are based, in part, on an analysis of the potential human health risks posed by the exposed Native Soils that exist on parcels within the RMP Area. The human health risk evaluation was conducted by developing chemical-specific interim target levels (ITLs) that will be protective of the human populations that could be exposed to the uncovered soils based on projected future uses, prior to commencement of development (ENVIRON 1999). A comparison of the concentrations of chemicals detected in soils to the health-based ITLs provided the basis for identifying areas where interim risk management measures are appropriate, and the foundation for developing an overall site-wide interim plan that will manage existing conditions in the RMP Area until development throughout the RMP Area is complete. Implementation of the IRMMs outlined in this section will reduce the potential human health impacts posed by exposed Native Soils prior to development, and will simultaneously fulfill other long-term property management objectives. Risk management measures outlined here are protective of human health and the environment during the respective Interim Periods for each parcel. The risk management measures that will be implemented to lessen impacts associated with the actual construction and development of parcels within the RMP Area (e.g., impacts associated with dust

generated during construction), including the soil management procedures and the measures to protect the construction workers involved in the buildout of the RMP Area, are discussed in Section 4.0.

3.2 Risk Management Measures to be Implemented on Parcels Prior to Commencement of Development

The risk management objective for the Interim Period is to protect current and future populations from the potential impacts associated with exposed Native Soils that exist on various parcels throughout the RMP Area. To achieve this objective, risk-based evaluations were conducted to determine whether exposure to Native Soils present on parcels within the RMP Area could pose a risk to populations who could be present in the RMP Area throughout the period of development. Health-based ITLs were calculated for each of the chemicals present in the exposed Native Soils using standard United States Environmental Protection Agency (USEPA) and Department of Toxic Substance Control (DTSC) risk assessment protocols. The ITLs were developed by assuming that human populations in the area could be exposed to the Native Soils through the inhalation of fugitive dusts, soil ingestion, and dermal contact exposure pathways for an extended 25- to 30- year period.

The results of the risk-based evaluations indicated that exposure to the chemicals present in the Native Soils through the inhalation of fugitive dusts generated from natural wind erosion will not adversely impact the health of either current or future populations who may be present in or adjacent to the RMP Area. In addition, mean chemical concentrations in surface soil (estimated by calculating the 95 percent upper confidence limit (UCL) of the arithmetic mean) were below the ITLs developed under assumptions of long-term (i.e., 25 to 30 years) direct contact pathways (i.e., soil ingestion and dermal contact). However, several individual locations within the RMP Area contain chemicals (primarily metals) that exceed the health-based ITLs. The health-based ITLs (Tables B-1 through B-3), a comparison of the lowest of the ITLs to concentrations detected within the RMP Area (Table B-4), and a figure indicating the specific locations where levels of chemicals exceed the health-based ITLs (Figure B-1), are presented in Appendix B.

Although a review of the average concentrations of chemicals in surface soils indicates that even long-term (i.e., 25 to 30 year) direct contact with exposed Native Soil would not be

expected to adversely impact human health, any form of risk management that minimizes long-term direct contact with the Native Soils will be effective in minimizing potential risks associated with long-term direct contact with the soils and will be protective of all individuals that may be present in the RMP Area throughout the Interim Period. Risk management measures which will restrict unauthorized access to the exposed Native Soils will minimize the potential for long-term direct contact, and will provide additional benefits such as limiting the unauthorized use of the RMP Area by trespassers, reducing the potential for unauthorized dumping, and improving the overall aesthetic quality of the area. Given the multiple benefits gained from controlling access, the following IRMMs will be implemented by Owners or their designees:

- i) Install Fencing and Gates to Restrict Unauthorized Access to Exposed Native Soils. Fencing and gates will be installed on all parcels that contain areas of exposed Native Soils, as depicted in Figure B-2. The fences will be chain link or equivalent fences that are a minimum of 6 feet in height. The fences will be of sufficient integrity such that they can withstand adverse weather conditions (e.g., heavy rains or winds). As indicated in Figure B-2, the portions of the RMP Area that are not fenced include: i) areas that are covered by asphalt, concrete, or buildings; or ii) railroad right-of-ways which are covered with a minimum of one-foot of ballast (aggregate). The installation of fencing will restrict unauthorized access to vacant parcels with exposed Native Soil. Fencing will also limit the potential for vehicles to travel on unauthorized areas and generate dusts. In addition to the installation of fencing, "No Trespassing" signs will be posted every 250 feet to inform individuals that access to the fenced areas is illegal. Fencing will remain until the areas of exposed Native Soils are covered or until development of a parcel commences, at which time the management measures governing the development of a parcel (described in Section 4.0) must be followed. It is the responsibility of the Owner or Lessee of each parcel (or the Owner or Lessee's delegate) to maintain fencing.

- ii) Install Fencing on Parcels that Become Vacant During the Interim Period. Any parcels where demolition or other activities will result in the uncovering of soils during the Interim Period shall be fenced within three working days after demolition so that access to any exposed Native Soils on the parcels is restricted. As described above, fencing will be maintained until development of the parcel commences or the parcel is paved or otherwise covered.

- iii. Regulatory Approval Required for Specified Interim Uses. As described in the Redevelopment Plans, there will from time to time be additional industrial/commercial uses which may occur in areas with exposed Native Soils within the RMP Area prior to the time “development”, as defined in Section 1.0, occurs. A comparison of the maximum concentrations detected in the surface soils to the ITLs developed for the commercial/industrial scenario indicates that only substantial daily contact with exposed Native Soils occurring for more than two and one-half years would potentially be of concern and would warrant any form of further evaluation or regulatory approval¹. New interim leases, which would permit substantial contact with exposed Native Soils for more than two and one-half years are not permitted, absent written approval of the RWQCB. The phrase “substantial contact with exposed Native Soils” would include any enterprise whose primary area of activity was located over or in the exposed Native Soils. An example of a new interim lease that would require RWQCB approval would include a parking lot operation located on exposed Native Soils where employees could potentially be continuously exposed to such Native Soils for more than 2.5 years. Examples of contact with exposed Native Soils which are not substantial in nature are businesses whose route of egress and ingress involve driving or walking across such Native Soils or involves employee parking on such Native Soils.

¹ The threshold exposure period of two and one half years was determined by adjusting the commercial worker ITLs to account for worker exposures that might occur for periods of less than the assumed 25 years. Commercial worker ITLs developed

- iv) Notification of Tenants. All Lessees and other tenants in the RMP Area will be notified by the Owner that the existing cover (asphalt, concrete, vegetation) is to remain intact. Lessees and tenants will be informed of the need to adopt certain health and safety measures, described in Section 4.0 of this RMP, if such measures are necessary.
- v) Conduct All Subsurface Repair Work in Compliance with the Worker Health and Safety Guidelines. All subsurface repair work where workers will come into direct contact with Native Soils, such as the repair of an existing utility or sewer line, will be conducted in compliance with the relevant health and safety guidelines, as described in Section 4.0.
- vi) Conduct Periodic Monitoring. In order to verify that the risk management measures that are implemented remain effective in restricting unauthorized access to exposed Native Soils during development of the RMP Area, the RMP Area will be inspected on a quarterly basis by the respective property Owners (or designees). The inspections will be conducted to verify that the access restriction measures are in place, and will identify areas where temporary fencing might need to be reinstalled. Additionally, the monitoring will include inspections of the asphalt-covered areas to verify that breaches in the existing cover have not occurred. A breach in the cover is a condition in which prolonged direct contact with Native Soils could occur. If the inspections identify areas where the fencing has been removed, or the existing cover has been breached, then one of the following response actions will be implemented as soon as reasonably practicable: 1) restore the fencing or install new fencing; or 2) repair the cover. Owners shall submit copies of the quarterly inspection reports to the RWQCB and the SFDPH by January 31 of each year on an annual basis. A Reporting Checklist

assuming daily direct contact with soils for 2.5 years (as opposed to the default assumption of 25 years) are less than the maximum concentrations detected in the surface soil across the RMP Area.

is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample inspection sheet, which contains the minimum items that are to be inspected during the monitoring program, is also provided in Appendix C.

- vii) Existing Soil Stockpiles: Management of soil stockpiles that exist within the RMP Area prior to the commencement of development, will occur in accordance with the soil stockpile procedures delineated in Section 4.3.5.2.

Implementation of these IRMMs will control access to exposed Native Soils that exist within the RMP Area and may exist throughout the Interim Period, and will protect the health of individuals who may be present during the phased development and occupancy of the RMP Area. This Section 3.0 is not intended to and does not set forth all environmental requirements unrelated to hazardous materials which might apply to the RMP Area prior to development, such as general dust control requirements. Any such applicable requirements will continue to apply independent of the RMP.

4.0 RISK MANAGEMENT MEASURES DURING DEVELOPMENT

4.1 Introduction

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to control potential impacts to human health and the environment associated with exposure to constituents present in the soil and ground water that could result from the construction activities and development of the RMP Area. The risk management measures were developed following the identification and analysis of each potential impact; implementation of these management measures will protect human health, including on-site construction workers, nearby residents and workers, and the environment from potential impacts that may arise during the construction and development of the RMP Area. As described below in Section 4.3.11, additional sampling may be required on individual development parcels in order to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Depending on the results obtained during any additional sampling, supplemental management measures, in addition to the management measures identified below, may be required on a parcel-by-parcel basis.

Section 4.2 identifies the potential activities associated with the construction and development of the RMP Area that could impact human health and the ecological environment. The risk management measures that will be implemented during development within the RMP Area are described in Section 4.3. Section 4.4 describes measures to be implemented in the Free Product Area in addition to those described in Section 4.3.

4.2 Identification of Development Activities that Could Impact Human Health and/or the Ecological Environment

Development activities in the RMP Area are likely to include various site preparation activities, such as but not limited to excavation, stockpiling, trenching, grading, backfilling and dewatering that will disturb the Native Soils and ground water within the RMP Area.

Based on the types of constituents detected in the Native Soils and ground water (discussed in Section 2.0), the potential events or activities associated with the development of the RMP Area that could result in potential impacts on human health and/or the ecological environment without implementation of appropriate risk management measures are listed below.

- Dust generation associated with soil excavation and trenching, grading and loading activities, backfilling, movement of construction and transportation equipment, and fugitive dust generation from winds traversing an exposed soil stockpile;
- Off-site transport of soils as sediments through surface water run-off from exposed soil stockpiles and graded areas;
- The inadvertent creation of horizontal conduits from utility trenches resulting in preferential pathways for ground water flow within the RMP Area;
- Management/movement of soils during construction;
- Identification of unknown subsurface structures and unknown areas of contamination;
- Unauthorized access to site during construction; and
- Dewatering activities.

The risk management measures that will control potential impacts associated with each of the events or activities listed above are described in the following section. Management measures that will be implemented to control potential impacts on the construction worker, contractors and short-term intrusive workers who may be engaged in limited excavation activities such as utility repair, are also described below.

4.3 Risk Management Measures to be Implemented During Development Activities

The following subsections identify the risk management measures that will be implemented to reduce potential impacts from the development of the RMP Area and describe the compliance monitoring that will be implemented during development. The risk management measures described below are applicable to all locations within the RMP Area. Additional management measures that will be implemented during development within the Free Product Area are described in Section 4.4.

4.3.1 Dust Control

Contractors will implement the following dust control measures during development activities in order to minimize and control the generation of dust. Effective dust control will reduce potential

impacts on construction workers, and will simultaneously control nuisance dust and dust containing chemicals from migrating outside of the development area to surrounding populations. Dust control measures will minimize dust that may be generated from excavation and trenching activities, grading, the loading of trucks, truck traffic, and soil stockpiles. The dust control measures described below apply to soil stockpiles that are in place for less than a 30-day period (referred to as construction stockpiles). Management measures specific to stockpiles that are stored for more than 30 days are identified in Section 4.3.5.2.

Prior to the initiation of development on a given parcel, the Owner, Lessee, or their designee (most likely a contractor) will submit to SFDPH and to the RWQCB written notification indicating whether the proposed development is of the type that will require dust monitoring, as described in Section 4.3.2.

4.3.1.1 Specific Dust Control Measures

The dust control measures that will be implemented at all construction sites within the RMP Area are identified below. The dust control measures identified below correspond to the PM₁₀ control measures recommended by the Bay Area Air Quality Management District (BAAQMD) in their California Environmental Quality Act Guidelines. The BAAQMD dust control guidelines are to be implemented during construction activities regardless of whether chemicals are present in the soil. Some of the dust control measures recommended by the BAAQMD, as described below, are similar to the measures that will be implemented to control off-site runoff, described in Section 4.3.3. Where management measures specified to control dust are different from those specified to control off-site runoff, the more stringent of the measures will apply.

The following dust control measures will be implemented at construction sites of all sizes:

- Water all active construction areas at least twice a day or as necessary to prevent visible dust plumes from migrating outside of the parcel under development.

- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed construction stockpiles. Management measures for stockpiles stored for more than 30 days are described under Section 4.3.5.2.
- Mist or spray water while loading transportation vehicles.
- Minimize drop heights while loading transportation vehicles.
- Use tarpaulins or other effective covers for trucks carrying soils that travel on streets.
- Pave, apply water three times per day, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily all paved access routes, parking areas and staging areas.
- Sweep street daily if visible soil material is carried onto public streets.

If construction sites are greater than four acres in size, then the following additional dust control measures will be implemented:

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Limit traffic speeds on unpaved roads to 15 miles per hour (mph).
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways (discussed further under the control of off-site runoff, Section 4.3.3).
- Replant vegetation in disturbed areas as quickly as possible.

The following additional optional dust control measures may be implemented by the contractor, as necessary, particularly if windy conditions persist before the area being developed is covered. A determination as to whether optional dust control measures should be implemented will be made by the contractor on a case-by-case basis based, in part, on the results of the Dust Plan outlined in 4.3.2. Additional control measures that could be implemented to reduce dust may include:

- Installing wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Installing wind breakers, or plant trees/vegetative wind breakers at windward sides(s) of construction areas.
- Suspending excavation and grading activities when winds (instantaneous gusts) exceed 25 mph.
- Limiting the area subject to excavation, grading and other construction activities at any one time.

4.3.1.2 Documentation of Dust Control Measures

Contractors will keep daily logs of all dust control measures that are implemented throughout the course of the day. Logs will be kept on file for three months following the completion of the activities that triggered implementation of the dust control measures.

4.3.2 Dust Plan

In conjunction with the dust control measures identified above, the Owner or Lessee, (or some other entity, such as a contractor, designated or certified by the Owner or Lessee), will follow this dust plan (the “Plan”) during construction activities to demonstrate that the health and safety of all off-site populations (where off-site refers to areas outside of the construction zone) is not being adversely impacted by the construction/development activities based on the chemicals that could be attached to the dusts. Potential exposures to the onsite construction worker are discussed in Section 4.3.8. If the Plan described in the following sections is implemented, then additional regulatory approvals will not be required.

A screening-level risk analysis was conducted to determine the potential impacts associated with unmitigated dusts generated during construction activities (ENVIRON 1998b). Based on the results of the risk analysis, it was concluded that as long as the annual average respirable dust levels at off-site receptor locations remained below $250 \mu\text{g}/\text{m}^3$, exposure to the chemicals that may be attached to the dusts will not adversely impact human health. This analysis assumed that exposure to the dusts will occur continuously for 20 years. Accordingly, the Plan has been devised to verify that the long-term average off-site dust levels to which

individuals could be exposed during the course of the 20-year development are at or below the 250 $\mu\text{g}/\text{m}^3$ target level.

The Plan is comprised of two parts. The first part identifies those conditions where real-time dust monitoring is not required. The exclusion of certain sites from the dust monitoring requirements was based on a conservative screening-level analysis. Those sites where it was concluded that off-site annual average concentrations would not exceed 250 $\mu\text{g}/\text{m}^3$ were identified, and will be exempt from the dust monitoring requirements. The second part of the Plan presents a real-time dust monitoring program (the "Program"). An Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can implement the following procedures or can choose to prepare its own monitoring program, as long as it has, at a minimum, the elements of the Program described in Part II below. In the sections below, 'Site' is defined as the area on which the development by that contractor is occurring. 'Dust-generating activity' is defined to be the activity for which dust monitoring may be necessary, and includes grading, excavation, trenching, soil stockpiling, backfilling, the handling and movement of Native Soils, or vehicular traffic on an unpaved surface.

4.3.2.1 Part I: Sites Excluded from Dust Monitoring Program

Implementation of a dust monitoring program will not be necessary if it can be shown that the off-site annual average concentration will not exceed 250 $\mu\text{g}/\text{m}^3$. Listed below are situations for which PM_{10} (i.e., particulate matter with aerodynamic diameter less than 10 microns in diameter) concentrations will not exceed an annual average concentration of 250 $\mu\text{g}/\text{m}^3$, even assuming the dust control measures identified in Section 4.3.1 have not been implemented. The following examples are not intended as a comprehensive list; if an Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can demonstrate to the RWQCB other conditions satisfying the 250 $\mu\text{g}/\text{m}^3$ threshold, a monitoring program will not be required. Note that even if a monitoring program is not required, the dust control measures discussed in Section 4.3.1 are still required.

- Potentially exposed populations are not closer than the distances shown in Figure 4. Worst-case annual average concentrations were modeled using USEPA's SCREEN3 air dispersion model to determine the distance at which ambient concentrations will be below an annual average of 250 $\mu\text{g}/\text{m}^3$. Modeling was performed for an area source using an uncontrolled emission rate of 51 lb/acre/day (used in the Mission Bay Final Subsequent Environmental Impact Report (FSEIR) as the estimate of emissions from construction sites) and worst-case meteorological conditions.

Figure 4 presents the relationship between the size of the Site (determined by either the length or width of the Site, whichever is greater) and the distance at which the annual average concentration will be below 250 $\mu\text{g}/\text{m}^3$, and identifies those combinations where dust monitoring will not be required. Conditions that fall above the line in Figure 4 would not require any dust monitoring, whereas conditions below the line would require implementation of the dust monitoring program described below. As an example, if the length of the Site (widest or longest dimension) is 440 feet, dust monitoring would need to be conducted if receptors (i.e., off-site workers or residents) are located within 100 feet of the Site.

- Repair or maintenance of underground utility lines. In contrast to large grading projects, underground utility maintenance or repair projects are typically relatively narrow in depth and width would thus not normally provide a significant source area for dust to be generated and sustained. A dust monitoring program will not be implemented during underground utility maintenance or repair work.
- Dust-generating activities that occur for less than four weeks. The analysis from which the acceptable dust concentration was derived assumes that the exposure would occur continuously for 20 years. A four-week project represents less than 0.4 percent of this total assumed 20-year exposure period. Since it is unlikely that dust-generating activities

occurring for a period of less than four weeks will contribute significantly to an individual's total dust exposure during construction activities in the RMP Area, dust generating activities that occur for less than four weeks will not require any dust monitoring.

4.3.2.2 Part II: Dust Monitoring Program

The objective of the Dust Monitoring Program (the "Program") is to collect data that is reflective of the levels of dusts generated during construction activities so that additional dust suppression measures can be implemented, if necessary, to reduce potential impacts to nearby populations. The Program will consist of real-time monitoring for PM₁₀ concentrations, as discussed in the following sections. Except as exempted in Section 4.3.2.1 above, the Program must be implemented during the period when development of the Site will involve dust-generating activities. However, once the development of a Site reaches a point that dust-generating activities are no longer occurring, dust monitoring will not be necessary. Compliance with the Program will be the responsibility of the Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee). Construction personnel will be periodically briefed in the field about the substance of the Program and will inform the construction supervisor if the dust levels exceed the criteria.

4.3.2.2.1 Monitoring Equipment

Monitoring will be performed for PM₁₀ using a portable real-time dust monitor, such as a DataRAM or equivalent instrument. The monitor will have a minimum detection limit of no more than 100 µg/m³, a minimum accuracy of 1 µg/m³ or 1 percent, and should be calibrated to greater than 250 µg/m³. Calibration of the monitor will be based on the manufacturer's specifications.

4.3.2.2.2 Sampling Frequency

There are two options available for sampling frequency that meet the objectives of the Program. For Option One, sampling will occur during the first two days of a new operation involving dust-generating activities, as well as every day that a new dust-

generating activity occurs on the Site. Samples will be collected once per hour, for a duration of 10-15 minutes, by a site walker carrying the dust monitor. If the concentrations on-site never exceed $250 \mu\text{g}/\text{m}^3$ during these first two days, sampling will occur one day per week for the remainder of the dust-generating activity, unless the 10-minute average concentration exceeds $250 \mu\text{g}/\text{m}^3$ during one of the once-a-week sampling events. If the 10-minute average concentration exceeds $250 \mu\text{g}/\text{m}^3$ during one of the once-a-week sampling events, then sampling must occur daily or until two successive day sampling events occur with no exceedance of the $250 \mu\text{g}/\text{m}^3$ threshold.

For Option Two, sampling will occur continuously during any dust-generating activity. The dust monitor will be set up in one location, as discussed below. The monitor will be checked four times during the course of the day to ensure that concentrations are not exceeding an average of $250 \mu\text{g}/\text{m}^3$.

4.3.2.2.3 Sampling Locations

Samples will be collected as close to the center of the dust-generating activity as possible. In this way, samples will represent worst-case levels of dust to which the nearby populations could be exposed. Samples typically should be collected from an approximate height of five feet above the ground surface.

If sampling is occurring with a site walker (Option One), the walker should start as close to the dust-generating activity as possible. If the concentrations are approaching $250 \mu\text{g}/\text{m}^3$, the walker should move towards the downwind Site boundary and continue to take measurements without interfering with the construction activities. Factors that will be taken into account when selecting the walker's route and destination will include the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. A demonstration that the levels within or directly downwind of the dust-generating activities are below $250 \mu\text{g}/\text{m}^3$ is sufficient documentation that levels off-site are well below the threshold.

If sampling is occurring through the use of continuous monitoring (Option Two), the monitor should be stationed as close to the dust-generating activity as possible without interfering in the activity. When the monitor needs to be stationed at the edge of the dust-generating activity due to the nature of the dust-generating activity, the monitor

should be placed on the downwind side of the Site. Unless site-specific data to the contrary is available, downwind will be to the east-southeast of the dust generating activity (consistent with the information used in FSEIR). As with Option One, other factors should also be taken into account when locating the monitor, including the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. It should be noted that during the course of the day, it may be necessary to relocate the dust monitor as any of these Site conditions change. A demonstration that the levels within or directly downwind of the dust-generating activities are below $250 \mu\text{g}/\text{m}^3$ is sufficient documentation that levels off-site are well below the threshold.

4.3.2.2.4 Recording of Quantitative Measurements

All PM_{10} data should be logged with a data recorder, downloaded from the DataRAM or equivalent instrument, and attached to the field logbook. Notes regarding the location of the monitors, the dust generating activities, and the nearby populations should also be recorded in the field logbook. In addition, any recommended mitigation and follow-up measurements will also be recorded.

4.3.2.2.5 Sampling Personnel

The sampling personnel should be selected at the initiation of the project, along with a backup person, in case the first person is absent. The individual conducting the sampling should be an individual experienced with the operation and handling of the sampling equipment to be used.

4.3.2.2.6 Criteria for Emissions Mitigation Activities

If the on-site, day-long average concentrations exceed $250 \mu\text{g}/\text{m}^3$, additional dust suppression measures as discussed in Section 4.3.1 shall be implemented for the next day, assuming the dust-generating activity continues to occur. Furthermore, additional dust suppression measures should be implemented if visible dust plumes are seen crossing the site boundary, regardless of the measured PM_{10} concentrations.

4.3.2.2.7 Reporting Requirements

If the on-site, day long average concentrations exceed $250 \mu\text{g}/\text{m}^3$, the RWQCB and the SFDPH will be notified by telephone as soon as practicable. A brief letter report describing the exceedance, and the response undertaken by the contractor to achieve compliance will be submitted to the RWQCB and the SFDPH within 5 business days after the exceedance.

4.3.3 Control of Off-Site Runoff

To minimize risks associated with storm water runoff during construction, Storm Water Pollution Prevention Plans (SWPPP) that meet the objectives of the San Francisco RWQCB will be developed by the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) which undertakes construction activities in the RMP Area. Preparation and implementation of a SWPPP is required regardless of whether any chemicals are present in the soil. A primary goal of the SWPPP is to reduce or eliminate off-site discharge of sediments and other pollutants during construction activities. If these procedures are implemented, then potential releases of chemicals in the soils will also be controlled. The SWPPPs will be prepared in accordance with SWRCB Order No. 92-08 DWQ (the "General Permit") and guidelines contained in the following documents: *"Information on Erosion and Sediment Controls for construction Projects: A Guidebook (RWQCB 1998a)* or later edition; and *"Erosion and Sediment Control Field Manual"* second or later edition (RWQCB, 1998b), or succeeding regulatory guidance documents. The provisions of the General Permit require the implementation of Best Management Practices ("BMPs") to control and abate the discharge of sediments, the monitoring of the BMPs to verify their effectiveness in controlling discharges, and revising the BMPs, if necessary.

For the RMP Area, the SWPPP development will be divided into two sequential phases: 1) the development of a "Conceptual SWPPP" that covers the entire Mission Bay RMP Area; and 2) the development of site-specific SWPPPs prepared for each applicable individual construction project. A brief description of each of the two phases is provided below.

Phase 1: Conceptual SWPPP for Mission Bay RMP Area

The Conceptual SWPPP prepared for the entire RMP Area is to be submitted to the RWQCB within 120 days after approval of the RMP. The general process for preparing the Conceptual SWPPP is described in Chart I-1 of Appendix I. As indicated in Chart I-1, the Conceptual SWPPP will consider the proposed outline presented in Table I-1 (in Appendix I), and will include those general elements that are practicable to include during the conceptual phase and that are not dependent on the specific details of the construction activities which will not be known until later. The Conceptual SWPPP will also address the pollution prevention measures for dry and wet months from construction related activities.

The initial step in the development of the Conceptual SWPPP is to define the organizational structure for the site-specific SWPPPs' Pollution Prevention Teams (PPTs) that will be responsible for preparing, implementing, and monitoring compliance with each of the site-specific SWPPPs. The Conceptual SWPPP will identify the essential roles of these PPTs and will describe the responsibilities each team will have in implementing, monitoring and enforcing its own site-specific SWPPP. Additionally, the training requirements for the members of each site-specific SWPPPs' PPT will be described in the Conceptual SWPPP.

Phase 2: Site-Specific SWPPPs

Following development of the Conceptual SWPPP, site-specific SWPPPs will be prepared as individual parcels in the RMP Area are developed. The overall process for preparing the site-specific SWPPP is described in Chart I-2 of Appendix I. The site-specific SWPPP will follow the proposed outline in Table I-1. A site-specific SWPPP must be developed by the Owner or the Lessee which undertakes the construction activities (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) for each construction project in the RMP Area greater than one acre in size, if the construction activities will involve soil disturbance as defined in 40 CFR Parts 122-124 and State Water Resources Control Board (SWRCB) Order 92-08 DWQ. As indicated in Chart I-2, the site-specific SWPPPs will largely follow the Conceptual SWPPP, but will include additional site-specific pollution prevention procedures and specific inspection, monitoring and record keeping procedures for the given construction activities at that particular development area. Site inspections, to determine the effectiveness of the BMPs and identify repair needs, will be conducted routinely during the dry months and more frequently during the wet months. In conformance with the Conceptual

SWPPP, the site-specific SWPPP will identify the name, organization and phone numbers of the Pollution Prevention Team members who are responsible for preparing, implementing, monitoring compliance, enforcing, and revising the site-specific SWPPP, if necessary. The site-specific SWPPP will include requirements that those with inspection responsibilities are qualified and/or trained in the field of erosion and sediment control practices and are familiar with the storm water pollution control rules and regulations.

Compliance with the site-specific SWPPP is the responsibility of the Owner or the Lessee which undertakes the construction activities (or other entity, such as a contractor who is knowledgeable in erosion and sediment control, designated or certified by the Owner or Lessee).

The SWPPPs will identify, at a minimum, the following BMPs², or substantially equivalent measures as described in detail in the above references (ABAG 1995 and RWQCB 1998b).

- Minimize dust during demolition, grading, and construction by lightly spraying exposed soil on a regular basis.
- Minimize wind and water erosion on temporary soil stockpiles by spraying with water during dry weather and covering with plastic sheeting or other similar material during the rainy season (October through April).
- Minimize the area and length of time during which the site is cleared and graded.
- Prevent the release of construction pollutants such as cement, mortar, paints, solvents, fuel and lubricating oils, pesticides, and herbicides by storing such materials in a bermed, or otherwise secured area.
- As needed, install filter fences around the perimeter of the construction site to prevent off-site sediment discharge. Prior to grading the bank slopes of China Basin Channel for the proposed channel-edge treatments, install silt or filter fences to slow water and remove sediment. As needed, properly trench and anchor the silt or filter fences so that they stand up to the forces of tidal fluctuation and wave action and do not allow sediment-laden water to escape underneath them.

² These nine BMPs are requirements set forth in the FSEIR.

- Follow design and construction standards found in *The Manual of Standards for Erosion and Sediment Control Measures* (ABAG 1995) for the placement of riprap and stone size.
- Install and maintain sediment and oil and grease traps in local stormwater intakes during the construction period, or otherwise properly control oil and grease discharges.
- Clean wheels and cover loads of trucks carrying excavated soils before they leave the construction site.
- Implement a hazardous material spill prevention, control, and cleanup program for the construction period. As needed, the program would include measures such as constructing swales and barriers that would direct any potential spills away from the Channel and the Bay and into containment basins to prevent the movement of any materials from the construction site into water.

Additional BMPs that may be included in the SWPPPs include the following:

- Stabilize all banks during rainy months using Interim or Permanent BMPs (e.g., an erosion control blanket).
- All construction entrances and exit points will be stabilized per RWQCB Erosion Control Field Manual to minimize tracking of mud outside the parcel boundaries.

4.3.4 Methods to Minimize the Potential for Creating Conduits

Utility trenches will be constructed within the RMP Area for the installation of underground utilities along alignments in the streets and on individual parcels. The trench depths could vary from approximately two to ten feet below ground surface (bgs). In general, the depth to ground water in the RMP Area is between two to ten feet bgs. If the trenches extend into the ground water, then the presence of such trenches could create a horizontal conduit for ground water flow and migration of chemicals. The management measures that will be implemented to minimize the potential for creating horizontal conduits include the following:

- Material that is less permeable than the surrounding soil will be placed through a variety of methods at 300-foot intervals and at the RMP Area boundaries along the trench to disrupt the flow within the trench backfill. One method during initial trench backfilling is the construction of a short section backfilled with a concrete or cement and bentonite mixture. Another method is the creation of a clay plug by compacting clay around the pipe for about a five-foot section of trench. A third method is the installation of barrier collars around the pipes by forming and pouring concrete in place. The appropriate method will be determined by a qualified environmental professional.

The ground water monitoring data collected to date have identified only one “plume” area (i.e., the Free Product Area) where the preferential ground water flow through the trenches could result in the migration of chemicals to nonimpacted areas. Nevertheless, to assure control of chemicals by way of preferential horizontal ground water flow, one or more of the management measures identified above will be incorporated by the contractor as standard trench construction protocol wherever the trenches in the RMP Area extend below the surface of the ground water, unless a qualified environmental professional determines that the ground water conditions do not warrant such measures.

4.3.5 Soil Management Protocols During Site Development

The following section presents the management protocols for handling, moving, stockpiling, and reusing soils during the development of the RMP Area and delineates the contingency protocols to be followed when unknown contamination or underground structures are identified.

4.3.5.1 Measures to Minimize Dust and Erosion from Soil Movement and Handling

Throughout the development of the RMP Area, soil may be handled and moved from one portion of the Project Area to another location (See Appendix D: Soil Reuse Within the Mission Bay Area). Impacts from soil movement can result from exposures to dusts generated during the soil handling and movement, and from exposures to soils that have

been transported outside of the development area either with a truck or through off-site runoff.

Potential impacts associated with the handling and movement of Native Soils will be addressed through the implementation of the dust control plan (see Section 4.3.1), and the SWPPP. The dust control measures are described in Section 4.3.1, and the requirements of the SWPPP are described in Section 4.3.3.

4.3.5.2 Management of Soil Stockpiles

Soil which is excavated within the RMP Area may need to be stockpiled before it is re-used. There are three potential concerns associated with the stockpiling of soils: dust generation, erosion, and unauthorized access to the stockpiles. The risk management measures that will be implemented to control each of these impacts are described below. The management measures described below apply to soil stockpiles that are in place for a period of greater than 30 days.

4.3.5.2.1 Risk Management Guidelines to Control Dust from Soil Stockpiles

As previously described in Section 4.3.1.1, the performance standard applicable to all stockpiled soils is to prevent visible dust plumes from migrating outside the parcel boundary. Water will be used to mitigate dust generation during the creation, movement, or use of the soil stockpiles. Over-watering, which could result in excessive runoff, will be avoided. Dust palliatives or other methods of dust control may be used if water proves to be inadequate.

While stockpiles are in place, dust will be controlled either through the use of a cover, or an alternative method that provides equivalent protection. If the stockpiles are covered, the cover will consist of either anchored plastic sheeting, hydroseeding (spraying a mixture of grass seed and mulch to create a vegetative cap), or an equivalent cover. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. If, however, stockpiles are to be in place and unused for one year or greater, then the stockpile will be covered with either hydroseeding or an equivalent cover.

4.3.5.2.2 Risk Management Guidelines to Control Erosion from Stockpiles

If soil stockpiles are to be in place during the rainy season (generally October through April), they will be covered with anchored plastic sheeting, hydroseeding, or an equivalent cover to minimize erosion of the soil. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. As described above, if stockpiles are to be in place and unused for one year or greater, the stockpile will be covered with either hydroseeding or an equivalent cover. Stockpiles that are placed within the boundaries of an active construction parcel greater than one-acre in size will not require additional erosion control measures, because the SWPPP will contain specific provisions to prevent off-site sediment discharges. As previously described in Section 4.3.3, the SWPPP may require that filter fences (or equivalent BMPs) be installed around the perimeter of the construction site to prevent off-site sediment discharge, if necessary. Filter fences (or equivalent BMPs) would likewise capture any sediments that may erode from the covered stockpile in place during the rainy season. The sediment traps that will be placed at the local stormwater intakes will also prevent sediments, including those that may result from erosion of the stockpiles, from entering the City's storm water system. Further details of storm water management will be included in the SWPPP (described in Section 4.3.3).

If, however, soil stockpiles are to be placed outside of the boundaries of a one acre active construction site, then additional erosion control measures may be appropriate, particularly if the stockpiles will be in place during the rainy season. To further prevent stockpile erosion, a silt fence constructed of geotextile fabric and hay bales (or other appropriate BMPs) will be constructed around all stockpiles that are placed outside of a construction site and that will exist for a period of greater than six months. Such fencing shall be placed so as to be able to encompass within the fenced area the volume of soil stockpiled.

4.3.5.2.3 Risk Management Guidelines to Control Access to Stockpiles

Access to all stockpiles located within the boundaries of an active construction site will be controlled by six-foot chain link fences or equivalent with lockable gates or, in a street, other appropriate barrier that will limit unauthorized access to the construction site (see Section 4.3.6). Additionally, warning signs will be posted on the fences to inform visitors that access is prohibited. Access to any stockpiles located outside of an active construction site will be restricted by placing fences with locked gates around the stockpiles and placing appropriate warning signs on the fences and gates.

4.3.5.2.4 Inspections of Soil Stockpiles

The Owner (or some other entity, such as a contractor, designated or certified by the Owner) shall conduct quarterly inspections of the soil stockpiles to ensure the integrity of covers, berms, and silt fences (as applicable), and to verify that the fencing is in place and that gates are locked and that the warning signs are visible. In the case of washouts of soil, the soil will be replaced to the stockpile and the area will be seeded or otherwise appropriately covered. In cases where anchored plastic sheeting is present, visible rips longer than six inches and wider than 1/4-inch will be sealed with membrane patches or replaced. The results of the quarterly inspections and a description of any material repairs undertaken will be reported to the RWQCB and the SFPDH by January 31 of each year. The RWQCB will be notified when the soil stockpiles have been fully removed.

4.3.5.3 Reuse of Native Soil within the RMP Area

The DTSC and RWQCB have determined that the soil within the RMP Area may be moved around, managed and reused within the RMP Area without triggering hazardous waste regulatory requirements, provided that the reuse is conducted in accordance with an RMP that specifies the soil management procedures. The soil management procedures are described in Section 4.3.5. Soil that is excavated and remains within the RMP Area will be placed under buildings or other covered areas such as streets, sidewalks, parking lots, roads or landscaping as described below under Section 4.3.5.5; provided, however, that before any soil removed from portions of the RMP Area currently designated for commercial use is placed as fill in any portion of the RMP Area designated for residential

use, the Owner will determine that the placement of such soil in the residential area is consistent with the human health risk Site Specific Target Levels (SSTLs) as established and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). Native Soil will not be used in the RMP Area in any manner other than described in this Section 4.3.5.3, unless the owner submits to the RWQCB supporting documentation and obtains written approval from the RWQCB.

4.3.5.4 Soil Disposal

Many of the projected construction activities in the RMP Area will require limited excavation of Native Soil to construct building pilings, elevator shafts, and other facilities. Other construction activities will require soil to be added for grading. The net balance of soil in the RMP Area is likely to be such that most excavated soil will be used for grading within the RMP Area. Based on this condition, off-site soil disposal is likely to be limited. Any soil disposed of off-site is subject to all applicable federal and state laws and regulations.

The nature of much of the Native Soil in the RMP Area is historic fill which includes construction debris, rock, glass, wood, bricks, bay mud and may contain other debris, such as pieces of metal. For use of the soil as fill material it may be necessary to remove material greater than four inches in diameter. Material not suitable for use as fill will be profiled and disposed of in accordance with all applicable laws and regulations.

4.3.5.5 Soil for Landscaped Areas

This Section 4.3.5.5 applies to landscaped areas accessible for human use. This section does not apply to landscaped areas (such as grassy swales) enclosed with fencing, covered with grates, or similarly protected to effectively prevent human access.

Materials that will be used for landscaped areas will consist of imported materials whose composition is sand, topsoil or fill that meets the prevailing commercial standards for fill used in commercial developments, or onsite material (such as Native Soil) that has been approved by the RWQCB ("Fill") in accordance with Section 4.3.5.3. The minimum depth of Fill that will be required for the landscaped areas will be between 1.0 and 1.5 feet. This depth of Fill is selected because generally accepted risk assessment protocols

assume individuals with access to surface soils may be exposed to the top 1.0 to 1.5 feet of soil. Before any Fill (including in the tree wells) is placed on top of the Native Soils in the landscaped areas, a water permeable synthetic netting fabric will be placed on top of the Native Soils, and the Fill will be placed on top of this fabric. The purpose of this fabric is as a “marker” to assist in identifying whether erosion of the Fill down to the level of the Native Soils has occurred. Irrigation systems, (defined as that portion of the system between the valve and the sprinkler head) in the landscaped areas are to be placed in Fill. The fabric will be in color other than brown or black, and will have a minimum tensile strength of 50 lbs/foot.

4.3.5.6 Contingency Protocols for Identifying Unknown Areas of Contamination and/or Unknown Underground Structures

The protocols to be followed in the event that unknown areas of contamination and/or underground structures are identified during site development are described in this section. These protocols will be conducted by the Owner, Lessee, or some other entity, such as a contractor or qualified consultant, designated or certified by the Owner or Lessee.

4.3.5.6.1 Procedures for Discovery of Unknown Areas of Contamination

Site development activities may result in the identification of previously unknown areas or types of contamination. The Soil Analysis Report, prepared per the requirements described in Appendix F and described further in Section 4.3.11, will summarize the results of the analytic testing that have been conducted on the parcel prior to Site development activities. A review of the Soil Analysis Report will allow the contractor to know the types of compounds which were previously discovered on the parcel, the magnitude of the detections, and the specific locations where they were discovered. This information, and other information in the RMP Area, will guide the contractor in determining whether an encountered environmental condition is unknown and therefore will trigger contingency monitoring, as described in the succeeding paragraphs below.

Unknown conditions which may trigger contingency monitoring procedures during site development include, but are not limited to, the following:

- oily, shiny, or saturated soil or Free Product in previously undocumented areas;
- soil with a significant chemical or hydrocarbon-like odor in previously undocumented areas;
- significantly discolored soil that reasonably indicates a concentrated source of metals within the RMP Area other than metals naturally occurring or otherwise known to be present in the Native Soils.

Upon the discovery of one of the conditions identified above, and if the conditions on the parcel vary materially from those previously documented in the RMP Area such that they could require either alternative or additional RMP measures to protect human health or additional calculations and assessments to confirm that the existing RMP measures will be sufficiently protective, the contractor will conduct the contingency monitoring.

Contingency monitoring, if conducted, will consist of the following steps: If unknown areas of potential concentrated metals are encountered, additional analyses should be conducted for the suspected constituents to assess the potential leachability of the metals, or the RWQCB should be contacted for assistance in determining if additional sampling and potential mitigation is necessary. If the encountered materials are suspected to be volatiles, the following contingency monitoring procedures may be followed:

- i) Conduct contingency monitoring by taking organic vapor readings using an organic vapor meter (OVM) or an organic vapor analyzer (OVA) to screen for the presence of fuel, oil, or solvents. If the OVM/OVA indicates that an unknown area of fuel, oil, or solvents has been detected, then the RWQCB will be notified to determine if additional sampling is appropriate prior to continuing construction in that area. Such additional characterization will not be required if the RWQCB concurs that the risk management measures currently specified in this RMP already mitigate the risk of the chemicals detected in this area. OVM or equivalent screening methods will be conducted by experienced personnel only.

- ii) If an unknown area of fuel, oil or solvents has been identified, and the RWQCB has requested additional characterization, the following steps will be taken:
 - a) Samples will be collected from the identified area and analyzed for volatiles and/or TPH compounds, depending on the suspected type of contamination. The sampling strategy will be discussed with the RWQCB prior to the initiation of the sampling activities. Analytical results collected from the suspected source will be compared to the health-based site-specific target levels (SSTLs) developed and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). If the levels are below the relevant health-based SSTLs, and the RWQCB concludes that the potential for ecological impacts is insignificant and does not require mitigation, then soil removal activities will not be required and the soil may be temporarily stored elsewhere pending reuse in the RMP Area. All soils will be contained during transport within the RMP Area so as to minimize the potential for spillage.
 - b) If the soil contains volatiles or petroleum constituents at levels that exceed the relevant health-based SSTLs, or if the RWQCB concludes that the potential for ecological impacts requires mitigation, then management measures, such as the following, will be undertaken:
 - 1. remove soil and dispose of off-site;
 - 2. install physical barrier, such as a vapor barrier or passive venting system, to prevent the accumulation of vapors in indoor environment;
 - 3. stockpile soil and aerate onsite, or in a staging area as may be appropriate, in compliance with all applicable laws and regulations;
 - 4. conduct *in situ* bioremediation measures;
 - 5. implement liquid or vapor extraction measures.

The appropriateness of one of the above management measures over another will depend on many factors, such as the type of constituent detected, the size of the identified impacted area, and the estimated cost of implementing the remedy.

- c) If Free Product is encountered, its areal extent and thickness will be characterized. The RWQCB will determine the appropriate response to the Free Product based on recommendations from the Owner or Lessee (or some other entity such as a contractor or qualified environmental consultant designated by the Owner or Lessee).
- d) The Owner or Lessee (or some other entity such as a contractor or qualified consultant designated by the Owner or Lessee) shall report the results of the sampling activities and the proposed course of action (e.g., no action necessary, soil excavation and off-site disposal, on-site treatment and soil reuse) to the RWQCB and obtain concurrence before implementing the remedial measures. Notification of the proposed action will also be provided to SFDPH. Construction activities in the specific area where the unknown conditions were identified will resume following the completion of the additional sampling activities and the implementation of any required responses.

4.3.5.6.2 Requirements for Underground Structures

During the course of excavation and construction activities within the RMP Area, it is possible that underground storage tanks (UST), sumps, maintenance pits for rail cars or other underground structures that were not discovered during previous site searches will be discovered. For example, USTs may be identified during grading and site excavation activities by the presence of vent pipes that extend above the ground surface, product distribution piping that leads to the UST, fill pipes, back fill materials and the UST itself. Other structures might not have any features that extend above the surface, and could be

unearthed when construction equipment comes into contact with them. As described below under Section 4.3.8.1, Environmental Health and Safety Guidelines, the on-site Health and Safety Officer will conduct periodic briefing meetings with all construction personnel on the procedures and reporting requirements to be undertaken when underground structures are identified. The following section outlines the measures that govern identification and removal of UST, and appropriate measures for addressing other underground structures identified during development.

4.3.5.6.2.1 Removal Requirements for Underground Storage Tanks

Chapter 6.7 of the California Health and Safety Code contains the specific requirements for removing and remediating contamination associated with a leaking UST. While the City of San Francisco's Local Oversight Program (LOP) is responsible for overseeing the removal of any UST, the RWQCB will maintain responsibility for overseeing environmental investigations and responses arising from releases from any UST in the RMP Area. Accordingly, in the event that a UST or appurtenant piping is discovered during construction and development of the RMP Area, then the RWQCB will be notified. Environmental investigations and responses required following removal of the UST will be conducted under the direction of the RWQCB and in accordance with the specific provisions delineated in Chapter 6.7 of the Health and Safety Code.

4.3.5.6.2.2 Procedures Governing the Identification, Investigation and Potential Removal of Other Subsurface Structures

For other subsurface structures that may have been related to former use and storage of chemicals, such as underground vaults and sumps, the following procedures should be followed to determine the proper disposition of the encountered structure.

- i) The structure should be inspected to assess whether it contains any indication of chemical residuals or free liquids other than water. This determination will be made with field observations by the Owner or Lessee's designated environmental engineer relying on visual observations, detection of chemical odors, and the results of vapor monitoring using a field OVM/OVA (as described above). If

there is no indication based on visual, odor, or OVM/OVA readings, that chemicals are or were present within the vault or sump, then removal of the structure is not necessary for environmental reasons.

ii) If a sump or vault contains liquids that appear, based on field observations (visual, odor, or OVM/OVA readings) to be chemical-containing, then the following steps shall be undertaken:

a) Characterize the chemical-containing liquids and/or soils, and determine the appropriate response action. Chemical-containing liquids are to be sampled for profiling purposes then properly removed and disposed under the direction of the Owner or Lessee's designated environmental engineer. The RWQCB would be notified prior to the selection of an appropriate response.

Chemical-containing soils are to be characterized as described above under 4.3.5.6.1. The procedures used to determine the appropriate action for the soils are identical to those described above in 4.3.5.6.1.

b) Inspect the sump or vault for cracks and holes once the liquids and/or chemical-containing soils are removed.

1) If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that the structure of the sump or vault is intact, and that subsurface releases of the chemicals to the underlying soils did not likely occur, then removal of the sump or vault is not required for environmental reasons.

2) If the physical inspection of the vault or sump suggests that chemicals may have been released to the underlying soils, then:

A) Conduct additional environmental investigations of the underlying soils to determine whether a release, sufficient to warrant removal, has occurred. If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that a release, sufficient to warrant removal, has not occurred, then removal of the sump or vault is not required for environmental measures; or

B) Remove the sump or vault under the guidance of the Owner or Lessee's designated environmental engineer. Response to the chemicals in the soils underlying the sump or vault, if necessary, will be consistent with the procedures described above in Section 4.3.5.6.1.

4.3.6 Access Control During Construction

The potential for trespassers or visitors to gain access to construction areas and come into direct contact with potentially contaminated soils or ground water will be controlled through the implementation of the following access and perimeter security measures:

- Except in streets, fence construction site to prevent pedestrian/vehicular entry except at controlled (gated) points. Gates will be closed and locked during non-construction hours. Fencing will consist of a six foot chain link or equivalent fence unless particular safety considerations warrant the use of a higher fence.
- In streets, use a combination of K-rails or similar barriers and fences with locked gates.
- Post "No Trespassing" signs every 250 feet.

Implementation of appropriate site-specific measures as outlined above would reduce the potential for trespassers or visitors to access construction areas and to come into direct contact with soil or ground water. The access control measures will be detailed in the Environmental

Health and Safety Plan (EHASP) (see Section 4.3.8) that will be developed prior to the initiation of construction activities. Compliance with the specific access control measures is the responsibility of the Owner or Lessee (or other entity, such as a contractor designated or certified by the Owner or Lessee).

4.3.7 Protocols for Dewatering Activities

Dewatering could be initiated within the RMP Area to facilitate excavation and subsurface construction work, such as the installation of foundations, to proceed without the constraint of working in wet conditions. Uncontrolled and extensive dewatering could adversely impact ground water by drawing ground water that contains chemicals toward the dewatered area thus causing those areas to be degraded with chemicals. If it is determined that building construction necessitates the use of dewatering methods, and the dewatering activities are to occur in or around a known area of contamination (e.g., the Free Product Area) the following risk management measures will be implemented to minimize potential impacts:

- Conduct preliminary estimates of the amount of water that will need to be removed for the specific construction activity.
- Based on the location of the proposed dewatering, determine whether the volume of water that would need to be removed would result in the enlargement of an existing ground water plume, if present, or significant alterations in the ground water flow patterns in the RMP Area.
- If the estimates of the volume and location of the ground water dewatering suggest that such activities are not likely to result in the enlargement of a ground water plume, or significant alterations in the flow patterns, then simple dewatering methods, such as the those employed through the use of a sump pump, would be implemented. These simple methods would be sufficient to prevent ground water from accumulating in an open excavation or trench.

- If, based on the opinion of the Owner or Lessee's qualified environmental engineer, dewatering is likely to result in the enlargement of an existing ground water plume or result in significant alterations in ground water flow, such as could occur in the Free Product Area, then other engineering techniques will be employed to minimize the potential dewatering impacts. One engineering technique that could be employed involves the installation of sheetpiles. In this example, the excavations will first be ringed with sheetpiles. With proper installation, sheet piles limit the volume of water entering the excavation and thus limit the dewatering operation's effect on surrounding ground water flow paths. Dewatering pumps installed inside the area surrounded by sheetpiles will lower the ground water level. Properly installed sheet piles that are interlocked and driven through dense clay materials will effectively limit ground water flow through the piles and minimize the volume of water being pumped. The appropriateness of one engineering technique over another will depend on the construction specifications and other site-specific factors and will be determined by the Owner or Lessee's qualified environmental engineer on a site-by-site basis.
- All water removed during dewatering activities will be discharged in accordance with appropriate permits from the City . It is anticipated that ground water removed during dewatering activities would be discharged into the City's sewer system. Discharge of ground water into the City's sewer system would be conducted in compliance with a discharge permit issued by the San Francisco Department of Public Works (SFDPW) or the Public Utilities Commission. If direct discharge to the surface water is determined to be the appropriate method for disposal of ground water removed during dewatering, permits issued by the RWQCB under the National Pollution Discharge Elimination System would be required. Compliance with the provisions of the discharge permit is the responsibility of the Owner or Lessee (or other entity such as a contractor or qualified environmental consultant designated or certified by the Owner or Lessee). Alternatively, it may be desirable to use the water generated during dewatering activities to control dust. If the shallow ground water is to be used for

this purpose, the Owner or Lessee will obtain advanced approval from the RWQCB on a parcel-by-parcel basis.

4.3.8 Construction Worker Management Measures

During construction activities, workers that may directly contact the Native Soil and/or the ground water will conduct the work in accordance with California Occupational Safety and Health Administration (Cal/OSHA) training and worker protection rules and regulations. The types of hazards that construction workers, or other workers involved in soil disruptive activities, are most likely to encounter include identifying previously unknown structures or areas of contamination, and having direct contact with fill materials that contain inorganic constituents and petroleum compounds and ground water that contains limited quantities of inorganics and petroleum products. Cal/OSHA is the state agency that is responsible for monitoring compliance with worker health and safety laws and requirements. Compliance with standard Cal/OSHA regulations, particularly Title 8, Chapter 4, "Division of Industrial Safety", will minimize the potential impacts associated with excavation activities, as the intent of these standards is to prepare workers for the types of hazards that are likely to be encountered during such activities. All activities conducted within the RMP Area must be in compliance with current Cal/OSHA rules and regulations, even if not expressly noted in this RMP. Further, all workers involved in subsurface activities must conduct the work in compliance with an Environmental Health and Safety Plan (EHASP). The EHASP will be an additional mechanism that will protect workers engaging in intrusive work. To achieve that goal, the EHASP will delineate the specific potential hazards associated with contact with Native Soils or ground water on the parcel under development, will specify to all workers that the fill material is likely to contain inorganic constituents, petroleum compounds and, on a parcel-by-parcel basis, other constituents, and will define the methods to be employed to minimize the hazards associated with such activities.

The minimum health and safety guidelines for all intrusive workers within the RMP Area, and a discussion of the components of the environmental health and safety plans, are provided below. Compliance with all aspects of the EHASP is the responsibility of the individuals engaged in the intrusive activities. An EHASP that meets the requirements specified in Section 4.3.8.2 will not require any further environmental approvals by any city agency, or any state agency which participated in the designation of the RWQCB as the Administering

Agency for the RMP Area under Chapter 6.65 of the California Health and Safety Code. EHASPs prepared for any construction projects will be submitted to the RWQCB as soon as reasonably practicable prior to the initiation of construction. Nothing in this RMP requires that construction workers working in the RMP Area comply with Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, unless such workers are required to comply with those requirements under Cal/OSHA rules and regulations.

4.3.8.1 Environmental Health and Safety Guidelines

While this RMP establishes the minimum requirements for an EHASP, the EHASP is a stand alone document developed by the Owner or Lessee's designated contractor or qualified environmental consultant prior to the initiation of any construction activities that would disrupt the Native Soils. It is the responsibility of the individual preparing the EHASP to verify that the components of the EHASP are consistent with current worker health and safety rules and regulations. All workers, including utility repair workers or other workers who may directly contact Native Soil or the ground water, would perform all activities in accordance with an EHASP. Consistent with the Cal/OSHA standards, an EHASP would not be required for workers such as carpenters, painters or others, who would not be performing activities that disrupt the Native Soils.

The EHASP will be designed to identify, evaluate and control safety and health with respect to the chemicals present in the soil and ground water. The EHASP will require that the on-site Health and Safety Officer conduct periodic briefing meetings (tailgate meetings) with construction personnel on the reporting requirements to be undertaken when underground structures are identified. Compliance with all aspects of the EHASP is the responsibility of the party conducting the construction activities.

4.3.8.2 Components of the Environmental Health and Safety Plans

The objectives of the EHASP are 1) to identify, evaluate and control site health and safety hazards related to the Native Soils or ground water, thereby helping to ensure the health and safety of all field personnel involved in the development activities on-site; and 2) to inform all contractors and subcontractors of the known chemical conditions present at the site so they are able to make prudent health and safety decisions related to soils and

ground water that will protect the health of the workers and the surrounding community throughout the development of the site.

The following section presents the minimum requirements for all EHASP that will be prepared prior to construction.

General Information

This section of the EHASP will contain general information about the site, including the location of the site, the objectives of the work that the EHASP is intended to cover, and the name of the individual(s) who prepared the EHASP. This section will also contain a brief summary of the possible hazards associated with the soil and ground water conditions at the site. Based on the known conditions in the RMP Area, the principal hazards posed by the soils and ground water that construction workers will encounter will be direct contact with the inorganics present in the Native Soils and ground water.

Key Personnel/Health and Safety Responsibilities

This section of the EHASP will identify the key personnel by name, and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the site. All workers at a given parcel who will potentially contact Native Soils or ground water will be provided a copy of the EHASP and briefed as to its contents. The health and safety responsibilities of each individual will be described in this section of the EHASP.

Facility/Site Background

Background information is provided in this section of the EHASP concerning past operations, the types of contaminants that may be encountered, and a brief description of the types of construction activities that will be conducted at the site. The description of the construction activities will focus on those activities that will result in the movement of Native Soils, and/or the potential for workers to have direct contact with the soil or the ground water. This section will provide a general map indicating the location of the site under construction, highlighting those particular areas where soil movement activities or direct contact with ground water may occur. The types of contaminants that may be

encountered during the construction activities that will be clearly identified in the EHASP include the following: inorganics (including metals and asbestos), petroleum hydrocarbons, and potentially low levels of volatiles (including methane) and semivolatiles.

Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with Native Soils or ground water is presented in this section of the EHASP. The hazards that will be discussed include, at a minimum, chemical, temperature and explosion hazards, if applicable. As part of the job hazard analysis, the EHASP will identify the chemicals likely to be encountered during the construction activities, and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit (PEL)). The procedures to mitigate the hazards identified in the job hazard analysis are also presented in this section of the EHASP. The principal measure that will mitigate the hazards associated with chemicals present in soil and ground water will be the use of appropriate Personal Protective Equipment (PPE).

Air Monitoring Procedures

The air monitoring procedures will be detailed in the EHASP. The air monitoring that will be conducted during the site construction activities includes monitoring for both volatile constituents and respirable dust. The objectives and monitoring protocols for each are described below.

Air Monitoring for Volatiles

Air monitoring for volatile constituents will be conducted in the event that unknown areas of contamination are identified during the construction activities. The purpose of the air monitoring as described in the EHASP is to verify that the workers are not exposed to levels of volatiles that exceed the Cal/OSHA PELs, the relevant exposure standards for workers. The presence of those constituents with the lowest OSHA PELs will dictate the level of PPE that will be required. Of the volatiles that are likely to be

present within the RMP Area, the chemical with the lowest OSHA PEL is benzene, with a PEL of 1 ppm.

If previously unknown areas of contamination are identified, real time air monitoring for volatiles will be conducted using an OVM/OVA. Monitoring will be conducted within the breathing zone of the workers. Sustained 5-minute readings in the worker's breathing zone in excess of 1 ppm will require additional sampling methods to determine whether any of the chemicals with OSHA PELs of 1 ppm are present in the breathing zone. The most common chemical-specific monitoring instrument that provides real-time data is the Draeger Tube. Draeger tubes for benzene, and a few of the chlorinated solvents that also have OSHA PELs of 1 ppm (i.e., 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,2,2-tetrachloroethane, and vinyl chloride) may be used to measure the concentration of vapors in the worker's breathing zone if the sustained 5-minute readings using the OVM/OVA exceed 1 ppm above background.

The table below summarizes the protocols in effect as of 1999 for conducting the volatile monitoring, including the instrument, the frequency and duration of the air monitoring, the specific actions levels and the mitigation measures that should be taken in the event that the trigger levels are reached. All of these actions are based on protecting the health of the workers involved in the construction activities. It is the responsibility of the individual preparing the EHASP to verify that the air monitoring protocols and action levels are consistent with current worker health and safety rules and regulations.

Real-Time Air Monitoring for Volatiles

Instrument	Calibration Gas Standard	Frequency/Duration of Air Monitoring	Action Level Above Background	Action ^a
OVM/OVA Calibrated daily	100 ppm isobutylene	5 minutes	For unknown constituents:	
			< 1 ppm	Work Proceeds in Level D
			1 – 5 ppm	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 5 ppm	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action
Draeger Tube for Benzene, 1,2-DCA, tetrachloroethane, vinyl chloride, and 1,1-DCE	none required	Immediately following OVM/OVA reading above background in breathing zone	For known constituents:	
			< OSHA PEL	Work Proceeds in Level D
			> OSHA PEL	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 10 times OSHA PEL	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action

^a Levels of Personal Protective Equipment, identified as Level D and Level C, are described in the following section.

Air Monitoring for Particulates

As described in Section 4.3.2.2, air monitoring for particulates will be conducted to demonstrate that the health and safety of the off-site populations is not being impacted by the development/construction activities. Dust monitoring, where appropriate, will verify that concentrations of PM₁₀ at the site boundary do not exceed 250 µg/m³.

Additional dust monitoring to verify that the workers are not exposed to nonvolatile constituents at levels greater than the chemical-specific OSHA PELs for nonvolatiles is not warranted³. If significant levels of asbestos from the serpentinite-rock in the Native Soils are likely to be disturbed during the construction activities, or if other suspect material is unearthed during construction, such as pipe insulation material, then personal monitoring for asbestos may be appropriate. In that circumstance, a determination as to whether personal monitoring for asbestos is warranted will be based on the conditions specific to the parcel being developed.

Personal Protective Equipment

This section of the EHASP will identify the appropriate required PPE that will adequately protect the workers from the hazards related to contact with Native Soils or ground water that are expected to be encountered at the site. Personal Protective Equipment is selected based on the known contaminants present at a site, and the known route(s) of entry into the human body. The primary constituents present within the RMP Area that workers will be exposed to include the inorganic constituents (including metals) present in the Native Soil. The primary exposure routes include direct contact

³ A screening-level evaluation was performed to determine the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs. The equation used to calculate the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs is as follows:

$$\text{Dust Level (mg/m}^3\text{)} = \frac{\text{OSHA PEL (mg/m}^3\text{)}}{\text{Average Soil Concentration (mg/kg)}} \times \text{Conversion Factor (10}^6\text{ mg/kg)}$$

Using the 95 percent Upper Confidence Limit (UCL) of the arithmetic mean to estimate the average concentration of each of the nonvolatile constituents present in the soil, the level of dust that would need to be present within the workers breathing zone over an eight-hour period in order to exceed a chemical-specific OSHA PEL is 54 mg/m³. Given the fact that dust levels greater than 5 mg/m³ would seriously reduce visibility, and would cause unpleasant deposits in the eyes, ears and nasal passages, it is highly unlikely that levels of dust would ever reach sustained concentrations of 5 mg/m³. Thus, additional dust monitoring to determine whether workers are exposed to nonvolatile constituents at levels greater than the OSHA PELs is not necessary.

with the Native Soils (i.e., dermal contact with soil and incidental ingestion). Based on the known conditions in the Project Area, the minimum level of PPE for intrusive workers that will come into direct contact with Native Soils or ground water will be modified Level D. For the RMP Area, modified Level D protection will include a long-sleeved shirt, long pants, gloves, and boots. If unknown areas of contamination are identified during the construction activities, and if the air monitoring for volatiles indicates that the levels of volatiles present in the breathing zone exceed the OSHA-PELs, then the worker PPE will be upgraded to Level C. Upgrading to Level C is accomplished by donning a half-face air purifying respirator with the appropriate cartridge. Certain construction activities, such as the installation of utility trenches could result in workers coming into direct contact with ground water. The contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavation. However, limited direct contact with ground water could occur. In the event that excavations are occurring in areas with shallow ground water, additional PPE that will minimize contact with water, including water repellant gloves and boots, will be worn by workers.

Work Zones and Site Security Measures

This section of the EHASP will identify the specific work zones of the site, and will describe the site security measures such as the placement of barricades, fencing, access control and access logs. The work zone will be defined as the area of the site where the Native Soil movement or ground water activities are being conducted. All workers within the work zone who will have direct contact with the Native Soils or ground water will perform the work in compliance with all aspects of the EHASP. The support zone will be located outside of the work zone, but within the boundaries of the site. All end-of-the day cleanup operations, such as cleaning of the trucks wheels (for vehicles exiting the site that could be tracking Native Soils offsite), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the site. The entire site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

Decontamination Measures

This section of the EHASP will describe the specific procedures that will be used to decontaminate both equipment and personnel. Decontamination measures will include cleaning the wheels of all vehicles in the support zone prior to their exiting the site, if applicable. Additionally, any contaminated PPE will be removed and placed in a designated area in the support zone prior to leaving the site.

General Safe Work Practices

This section of the EHASP will discuss the general safe work practices to be followed at the site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, and any special precautions that may be specific to the site.

Contingency Plans/Emergency Information

This section of the EHASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash, first aid kit and a fire extinguisher, and emergency telephone numbers and contacts are identified. A map indicating the route to the nearest hospital is also provided in this section of the EHASP. San Francisco General Hospital is the closest hospital to the RMP Area. The address and phone number for San Francisco General is as follows:

San Francisco General Hospital
1001 Potrero Avenue
San Francisco, CA
(415) 206-8111

4.3.9 Quarterly Reports During Development

During periods of development on a given parcel that could result in disturbance of Native Soils or ground water, the Owner, Lessee, or their designee will prepare a quarterly status report

summarizing the activities occurring on that parcel. The primary purpose of the quarterly report is to keep the regulatory agencies apprised of the conditions arising during development. The quarterly status report will summarize the dust control measures being implemented, the results of the dust monitoring program, and any notification requirements that were triggered by the dust monitoring. Additionally, the quarterly report will summarize the results of the soil stockpile inspections, the discovery of any unknown contaminants or underground structures, and all response actions undertaken to manage such conditions. The quarterly report will be submitted within 30 days after the end of the calendar quarter to the SFDPH and the RWQCB. The Owner may request that the reports be submitted on a less frequent basis, if, based on the scale of the development, the anticipated time that the development activities will be occurring, or based on experience to date the Owner believes that less frequent reporting is appropriate. Upon the expressed approval of the RWQCB, the summary status reports may be submitted on an alternative, less frequent schedule. Quarterly reports will not be required for periods of development that will last less than four weeks.

4.3.10 Documentation of the Completion of Construction Work

At the conclusion of the development activities on parcels within the RMP Area, all Native Soils remaining on that parcel will be covered by buildings, parking lots, roads, sidewalks, or landscaping with between 1.0 to 1.5 feet of Fill, as specified in Sections 4.3.5.3 and 4.3.5.5. Following development of each parcel, a completion letter documenting that the cover is in place and is in compliance with Sections 4.3.5.3 and 4.3.5.5 of the RMP will be submitted to the RWQCB and the SFDPH. The completion letter will include a figure that will identify the location of any buildings, parking lots, roads, sidewalks and landscaping on the developed parcel.

4.3.11 Framework for Complying with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes

All construction activities in the RMP Area must comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Prior to the initiation of site development activities, a site contractor proposing to disturb 50 cubic yards or more of soil at sites located bayward of the 1851 high tide line must conduct environmental assessments of that

soil to determine if the chemicals are of sufficient concentration to cause the soil to be designated as hazardous waste, in connection with obtaining a building permit. Figure 5 presents a map of the 1851 high tide line.

As described in Appendix F, chemicals present at levels that exceed the state or federal hazardous waste levels trigger the need for the site contractor to propose measures, through a Site Mitigation Report, to address any significant health or environmental impacts, if any exist, prior to obtaining a building permit.

The framework provided below summarizes the steps that will be followed to implement and comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. As described in the preceding sections, the overall RMP for the entire RMP Area enumerates the various site mitigation measures that will be implemented throughout the development of the RMP Area and that will mitigate potential risks to human health and the environment that could be caused by the presence of chemicals in the soils or ground water. These measures will be completed at all times during the course of development, regardless of whether a building permit is required. As described more fully below, the approved RMP will become the Site Mitigation Report referred to in the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F and in the framework below, unless additional sampling conducted to comply with Appendix F indicates that the measures contained in the RMP are not sufficient. Unless additional measures not addressed in the RMP are necessary to mitigate risks, a separate Site Mitigation Report will not be submitted. The following steps shall be followed to implement compliance with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes:

- (1) Prior to obtaining a building permit from the City for a particular development activity in a portion of the RMP Area, the Owner, Lessee, or their designee will obtain confirmation from the SFDPH that the site history and sampling completed for that portion of the RMP Area (hereafter the "Site") to date are either (a) adequate to meet the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes, in Appendix F or (b) must be supplemented. In making this determination, the Owner, Lessee, or their designee will consider the analytes that had been analyzed in previous sampling events. As an example, methane sampling may be required.

- (2) If the Owner, Lessee, or their designee or SFDPH determine that supplementation of the site history or sampling is required, the Owner, Lessee or their designee will supplement the site history or sampling according to the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F.
- (3) After the Owner, Lessee, or their designee and SFDPH determine that the site history and sampling are complete, the Owner, Lessee, or their designee will review the sampling results to confirm that the RMP, using the risk-based corrective action approach and health-based criteria previously adopted by the RWQCB for the RMP Area in its approval of Mission Bay risk assessments (ENVIRON 1998a) satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified person is prepared to certify that the RMP will mitigate significant health and environmental risks).
- (4) If the Owner, Lessee, or their designee determines that the RMP meets the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit supporting documentation of that determination to the SFDPH and will provide the necessary certification required under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.
- (5) If the Owner, Lessee, or their designee determines that the RMP does not meet the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit a site-specific RMP Supplement to the SFDPH and the RWQCB containing additional risk mitigation or management measures for that Site. The submittal of the site-specific RMP Supplement will be accompanied by a certification necessary under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F. The certification shall confirm that the site-specific RMP Supplement, using the risk-based corrective action approach and the health-based criteria previously adopted for the RMP Area in approval of Mission Bay risk assessments, satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified individual is prepared to certify that the site-specific RMP Supplement will mitigate significant health and environmental risks).
- (6) Upon receipt of the certification specified in Steps Four or Five, the SFDPH will confirm that the Owner's or Lessee's certification is complete, that the applicant will have complied with the requirements of the Ordinance Requirements for Analyzing the Soil

for Hazardous Wastes presented in Appendix F upon completion of the mitigation measures applicable prior to and during construction, and will forward the certification to SFDPW so that the building permit may be issued.

- (7) Upon the completion of construction, the Owner, Lessee, or their designee will submit certification to the SFDPH that it has carried out those measures specified in the RMP or the Site-specific RMP Supplement (which satisfies the requirements for the Site Mitigation Report, as specified in Steps Three or Five) applicable prior to and during construction. Upon receipt of the certification, the SFDPH will provide the Owner, Lessee or their designee and the SFDPW with written notification that the Owner has complied with all requirements of the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.

~~4.4 Additional Management Measures Applicable to Development in the Free Product Area~~

~~A part of the RMP Area contains a measurable thickness of free petroleum product on the ground water table ("Free Product"), resulting from the historic use of that area for bulk petroleum storage and transport by numerous oil companies. The area affected by Free Product is located in the southeast quadrant of the RMP Area. As was summarized in Section 2.0, and presented in the risk assessments, the presence of Free Product will not adversely affect the health of the future populations in the area, either before or after development. However, additional management measures may be warranted when developing in the designated Free Product Area (defined below) in order to minimize impacts on construction workers and the environment. These additional measures are specified below. If Free Product is encountered in an area that is not contained in the Free Product Area (as that geographic area is deemed to change over time), then the procedures in Section 4.3.5.6.1 (Procedures for Discovery of Unknown Areas of Contamination) will apply.~~

~~All measures described below would be implemented in addition to other applicable risk management measures required by this RMP. These measures only apply to work in the area designated below as the Free Product Area.~~

5.0 RISK MANAGEMENT MEASURES AFTER DEVELOPMENT IS COMPLETE

5.1 Introduction

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to reduce long-term risks to human health and the environment from residual chemicals present in the soil and ground water after the development of parcels in the RMP Area is complete. The identification of the appropriate risk management measures was based on a comprehensive human health and ecological risk evaluation conducted to determine whether the existing environmental conditions would pose a risk to human health or the environment given the specific development plans for the RMP Area. Implementation of the management measures identified in this section is the responsibility of each Owner, Lessee, or their delegates with relevant property maintenance responsibilities.

The potential human health and ecological risks posed by the chemical constituents in the soil and ground water after development is complete are identified and discussed in Section 5.2. Section 5.3 describes the long-term risk management measures to be implemented in the RMP Area.

5.2 Identification of Potential Human Health and Ecological Impacts After Development is Complete

As described in Section 1.0, a human health and ecological risk assessment was conducted to determine whether the presence of chemicals in the soil or ground water would adversely impact human health or the environment once development of the RMP Area was complete. The populations included in the risk evaluation and the pathways through which each of the populations could be exposed to the chemicals present in the soil and ground water once development of the RMP Area is complete is presented in Appendix G. The conclusion of the risk assessment is that none of the chemicals is present at concentrations that will pose a threat to human health following the completion of the planned development. Further, with the potential exception of the Free Product Area, none of the chemicals is present at concentrations that would adversely impact the aquatic ecosystem. The potential ecological impacts associated with the Free Product Area is the subject of a separate investigation which is being conducted in accordance with RWQCB Order No. 98-028.

5.3 Long-Term Management of Risks After Development is Complete

The purpose of the following section is to describe the long-term management measures that will be undertaken to mitigate potential long-term risks to human health and the environment after construction and development of parcels in the RMP Area is completed and in the event of further construction or development at some point in the future. The components of the long-term risk management of the RMP Area are as follows:

- Covering of the RMP Area;
- Limiting future residential development within the RMP Area to preclude single family homes with private front yards or back yards;
- Restricting the future use of ground water for domestic, industrial or irrigation purposes through recordation of the Environmental Covenant;
- Providing protocols for future subsurface activities; and
- Implementing a long-term monitoring program.

These long-term risk management measures are discussed in the following sections. Compliance with all aspects of the RMP and the specific institutional controls that must remain in place during the occupancy of the RMP Area, is the specific responsibility of the Owner, Lessee or their delegates of each development area and is described further in Section 6.0.

5.3.1 Covering of the RMP Area

After development, all Native Soils will be covered by buildings, parking lots, roads, sidewalks or landscaping with between 1.0 and 1.5 feet of Fill, unless alternative measures are approved by the RWQCB. Any future development must ensure that Native Soils are precluded from contact with humans, by using buildings, pavement or appropriate Fill for landscaping.

5.3.2 Limitations on Future Development Within the RMP Area

The parcels within the RMP Area with land use designations permitting future residential development are identified in Figure 2. As indicated, the parcels targeted for residential use in Mission Bay North and Mission Bay South area are as follows:

- **Mission Bay North:** Parcels N1, N2, N3, N3a, N4, N4a and N5
- **Mission Bay South:** Parcels 2, 3, 4, 5, 6, 7, 9, 9a, 10, 10a, 11, 12, 13 and X2

Residential development within the RMP Areas identified above will be limited to preclude single family homes with private front or back yards. If residential development were to allow individual Owners or Lessees to have access to Native Soils, then those individuals would be subject to the applicable provisions of the RMP (Section 4.0).

If the Redevelopment Plans are amended to permit residential uses in areas currently designated for nonresidential use, then further risk assessment analysis will be conducted before additional residences could be built in these areas.

5.3.3 Use of Ground Water Within the RMP Area

The ground water within the RMP Area may not be used for domestic, industrial or irrigation purposes. Ground water wells will not be installed within the RMP Area except for environmental monitoring or dewatering purposes or for RWQCB-approved remediation. Environmental monitoring wells within the RMP Area would be installed in compliance with any City guidelines and would be secured and locked to prevent unauthorized access to the ground water. The ground water within the RMP Area would remain unused unless at some point in the future an assessment of the risks from direct exposure to the ground water is conducted and subsequently if the RWQCB as the Administering Agency under AB2061 approves the use of the ground water. The provision is detailed in the Environmental Covenant recorded against the properties within the RMP Area.

5.3.4 Protocols for Future Subsurface Activities

Entities contracting with Owners or Lessees to conduct maintenance, construction, or repair work which would result in the disturbance of soils under buildings, parking lots, walkways or landscaped areas would be bound by the specific requirements set forth in Section 4.0, as appropriate. Following construction, excavation, or soil disturbance, all Native Soil will be covered as described in Section 5.3.1 so that direct contact with the Native Soils will be precluded.

5.3.5 Long-Term Monitoring Program

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner (or some other entity such as a Lessee, which has by contract assumed the Owner's responsibility for compliance with the RMP after development) shall conduct an annual physical inspection of the property that confirms the following:

- The Native Soils continue to have the cover specified in Section 5.3.1 and the cover is maintained such that Native Soils are not exposed;
- Single family homes with private front or back yards are not developed within the RMP Area in accordance with Section 5.3.2;
- Ground water is not being used for domestic, industrial or irrigation purposes, as required in Section 5.3.3 and
- To the extent that the Owner or other entity procured subsurface work, the protocols for the subsurface activities were followed, as required by Section 5.3.4.

A Reporting Checklist is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample monitoring form identifying the items that should be included in the annual physical inspection is presented in Appendix C. Owners shall submit the annual inspection report to the RWQCB and the SFDPH by January 31 of each year. As indicated, the physical integrity of the cover, both the Fill in the landscaped areas and the asphalt/concrete in the other areas, will be monitored to verify that prolonged direct contact with Native Soils will not occur. For the landscaped areas, the identification of breaches in the landscaping will be aided by the synthetic fabric that will be placed between the Native Soils and the Fill during the initial development of the landscaped areas. If during the inspections, the synthetic fabric is observed, then this will serve as an indication that the Fill has deteriorated significantly and that the Fill needs repair. Similarly, the inspections of the asphalt or concrete covered areas will focus on identifying areas where breaches in the cover, and the potential for prolonged direct contact with exposed Native Soils could occur. Descriptions of the condition of the asphalt or concrete covered areas will be noted in the inspection reports, and any necessary repairs will be conducted and documented. As

the risk analyses have indicated that it is only the potential for prolonged (i.e., 25 to 30 year) daily direct contact with Native Soil that warrants management, an annual inspection/monitoring and repair program is appropriate.

6.0 REGULATORY OVERSIGHT AND ENFORCEMENT OF RMP

The purpose of this Section is to describe the regulatory oversight and enforcement mechanisms that will provide the structure for the risk management measures applicable to the RMP Area to remain in place and continue to be effective. Each Owner of any portion of the RMP Area will be notified of the RMP and its contents, and required to comply with it. This Section describes how and where the RMP will be maintained, and specifies the process through which Owners and Lessees will be notified of the RMP and informed of compliance obligations. Additionally, this Section identifies the monitoring/reporting requirements and enforcement procedures that can be exercised by the RWQCB to ensure compliance with all provisions of the RMP.

6.1.1 Public Repositories of the RMP

The RMP for the entire RMP Area shall be maintained in two locations:

- With the Administrative Clerk of the Regional Water Quality Control Board for the San Francisco Bay Region in a file labeled “Mission Bay Risk Management Plan Area” and maintained in the public record room for active RWQCB oversight sites. This file shall be available for public review during the normal business hours in the public record room.
- With the SFDPH for the City and County of San Francisco in a file labeled “Mission Bay Risk Management Plan Area” and available for public review during the normal business hours of the Department of Public Health.

Each page of the RMP approved by the RWQCB shall be dated with the month and year that the RWQCB has approved the RMP or its modifications. A page shall be added to the front of each copy of the RMP when modifications are inserted, indicating the dates and pages of the substitutions.

6.1.2 Contents of RMP Area File

Both the RWQCB and SFDPH will maintain an index for all RMP Area technical reports and data submitted. It shall include any technical reports submitted to the RWQCB or SFDPH for

the RMP Area, including without limitation, any reports or documents submitted to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. These files shall be available for public review during normal business hours.

6.2 Modifications to the RMP

It is anticipated that the provisions of the RMP may need to be amended from time to time.

Examples of circumstances that may require RMP modifications include but are not limited to:

- When currently unanticipated conditions are encountered during construction, the response to which is not specified in this RMP and it is believed that the conditions may recur;
- When the manner of construction used for particular buildings in the RMP Area is materially changed and necessitates different safeguards; or
- Evolving construction or landscape technologies or techniques allow the long-term management of risks identified in Section 5.0 to be accomplished in a different but equally protective ways.

This list is not exhaustive but merely representative of the kinds of changes that may trigger the need for appropriate modifications over the life of this project.

A proposed RMP modification will not be presented to the RWQCB unless the following entities concur in proposing the amendment: (i) the current Owner of the affected parcel; and (ii) Catellus, the City and/or the Redevelopment Agency, and the Regents of the University of California, to the extent that the proposed RMP modification affects RMP compliance obligations that are imposed upon them in their agreements with each other. All modifications proposed to the RWQCB must include a certification from the Owner that the Owner has reviewed all relevant technical reports and data on file with both the RWQCB and SFDPH, and that the modification complies with the FSEIR.

When such affected parties concur upon a proposed modification to the RMP, they will jointly present such proposed modifications to the RWQCB for their approval. The RWQCB will review the proposed changes, request any additional background information if needed, and issue a decision regarding the proposal within 45 days of receipt of a fully complete application supporting the requested modification. The decision of the RWQCB regarding the request for

modification shall be considered final and shall be accepted by all involved parties except that any aggrieved party can request that a RWQCB decision which is contrary to their interests be reviewed by the RWQCB itself at a regularly scheduled public hearing. Once the RWQCB has approved the RMP modifications, the RMP changes will be filed in the RWQCB public copy and with the Department of Public Health. The procedures for modification and review of the RMP proposed modifications set forth in this Section 6.0 are in addition to, and not in lieu of, any procedures for advance review, notice, approval and dispute resolution set forth in private contracts between Catellus Development Corporation, UCSF, the City, and the Redevelopment Agency.

6.3 Notification of Owners and Lessees and Identification of Compliance Obligations

An Environmental Covenant is recorded in the Official Records of the City and County of San Francisco against each parcel in the RMP Area and runs with the real property under California Civil Code 1471. The Environmental Covenant references the RMP and requires compliance with its provisions.

Because the Environmental Covenant is recorded, the Covenant will be provided to the Owners in the RMP Area, who will also become bound to comply, as a matter of law, with the Environmental Covenant. The Owners who have executed or become bound by the Environmental Covenant have also agreed by its terms to provide a copy of the RMP governing the parcel being transferred to applicable transferees.

The Environmental Covenant provides, among other things, that:

- Each Owner or Lessee will be deemed by their purchase, leasing or exclusive possession of the parcel within the RMP Area to be in compliance with the Environmental Covenant and the RMP. Recordation of the Environmental Covenant shall be binding on all Owners and Lessees, regardless of whether a copy of the Environmental Covenant has been attached to or incorporated into any given deed or lease.
- In all future leases, licenses, permits or other agreements between, on the one hand, an Owner or Lessee, and, on the other hand, another entity, which authorizes such entity to undertake or to engage in subject to one or more

requirements in this RMP, the Owner or Lessee will provide a copy of the RMP or its relevant provisions to such parties prior to the execution of the agreements and ensure that the agreements contain covenants that (i) such entity will comply with the RMP (to the extent the RMP applies to such parties' activities); (ii) that such entity will obligate other entities with which it contracts for construction, property maintenance or other activities that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP; and, (iii) such entity (and the entities with which it so contracts) will refrain from interfering with the title Owners' or Lessees' compliance with the RMP.

- In all agreements between an Owner and another entity provided for access to an affected parcel for the purpose of environmental mitigation, monitoring or remediation ("Environmental Response") by such entity, the Owner will provide the entity with a copy of the RMP prior to execution of the agreement and ensure that the agreements contain covenants by the entity that the entity will (i) comply with the RMP (to the extent the RMP applies to the entity's activities); and (ii) obligate any person or company with which it contracts for Environmental Response that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP.

6.4 Monitoring and Reporting

There are several junctures during the development of the RMP Area where this RMP, by its terms, requires monitoring and/or reporting. The monitoring and reporting requirements prior to, during, and after development are identified below. A Reporting Checklist, identifying each management measure and the specific reporting requirements for the different periods of development, is presented in Appendix C.

6.4.1 Prior to Commencement of Development

The Owner or Lessee (or some other entity, such as a property management company, designated or certified by the Owner or Lessee) shall follow the pre-development monitoring requirements described in Sections 3.2(v) and 3.2(vi). Appendix C presents a checklist summarizing the reporting requirements for parcels prior to the initiation of development.

6.4.2 During Development

- Prior to the initiation of construction activities within the Free Product Area, the Owner or Lessee will notify the RWQCB as described in Section 4.4.2(i).
- Prior to the commencement of development, the Owner or Lessee shall submit the dust monitoring notification to the RWQCB and the SFDPH, as described in Section 4.3.1.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall document implementation of the dust control measures, as described in Section 4.3.1.2 and shall comply with the requirements of the Dust Monitoring Program, set forth in Section 4.3.2.2. Further, the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall comply with the specific reporting requirements of the Dust Monitoring Program, as described in Section 4.3.2.2.7.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) must prepare, prior to certain types of construction activities, a Storm Water Pollution Prevention Plan (SWPPP), (as described in Section 4.3.3), must submit the SWPPP to the RWQCB, and must comply with the provisions detailed in the SWPPP.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall conduct quarterly inspections of any soil stockpiles as described in Section 4.3.5.2.4.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will provide any notification required under state, federal or local law and will provide notice of such conditions to the RWQCB as the Administering Agency for the RMP Area whenever the construction contractor encounters: (i) unknown areas of contamination in the soil or ground water, per the notification requirements described in Section 4.3.5.6.1(i) and 4.3.5.6.1(ii)(d); (ii) any other unanticipated environmental

condition, the response to which is not specified in the RMP; (iii) other indications of a release of hazardous substances or hazardous materials which is required by state or federal law to be reported to a state environmental agency; (iv) a UST, per the notification requirements described in Section 4.3.5.6.2.1; or (v) any underground structure such as a sump, vault, or other subsurface structure if it is determined that the structure was related to former use and storage of chemicals and/or releases to the underlying soils occurred, as described in Sections 4.3.5.6.2.2 (ii)(a) and 4.3.5.6.2.2(ii)(b)(2).

- The Owner or Lessee's designated contractor will submit the EHASP to the RWQCB prior to the initiation of construction if the construction project is projected to last more than four weeks, as described in Section 4.3.8.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare the quarterly status report, as described in Section 4.3.9.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare a completion letter, as described in Section 4.3.10.

Appendix C presents a checklist summarizing the reporting requirements for parcels during the period of development.

6.4.3 After Development is Complete

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner or Lessee (or some other entity such as a long-term lessee, which has by contract assumed the Owner's or Lessee's responsibility for compliance with the RMP after development) shall follow the long-term monitoring program described in Section 5.3.5. Appendix C presents a checklist summarizing the reporting requirements for parcels after development of the parcel is complete.

6.5 Enforcement Authority

Responsibility for determining whether RMP requirements have been breached and, if so, the initiation of any enforcement action where it is appropriate shall rest with the RWQCB. The information provided to the RWQCB, as set forth in Section 6.4 will apprise the RWQCB of the status of RMP compliance for the RMP Area. Upon learning that a particular parcel is not RMP compliant, the RWQCB has the authority to enforce the provisions of the Porter Cologne Water Quality Control Law, Sections 13000, *et seq.* of the Water Code, against certain entities, including those who have caused or permitted the discharge of pollutants to land where it may create a nuisance. Additionally, as the stated beneficiary of the Environmental Covenant, the RWQCB may enforce the RMP restrictions through a civil action brought against an Owner or a Lessee which is not in compliance with the RMP.

The RWQCB's enforcement activity is separate from and in addition to the enforcement authority retained by the City in ensuring compliance with Appendix F requirements during construction.

7.0 REFERENCES

- Association of Bay Area Governments. 1995. *Manual of Standards for Erosion and Sediment Control Measures, 2nd Edition*. May.
- Camp Dresser & McKee, Larry Walker Associates, Uribe and Associates and Resources Planning Associates. 1993. *Storm Water Quality Task Force, Construction Activity Best Management Practice Handbook*. March.
- ENVIRON Corporation. 1997. *Results of Investigation, Mission Bay North of Channel, San Francisco, CA*. April.
- ENVIRON Corporation. 1998a. *Site Investigation and Risk Evaluation Report, Mission Bay South of Channel, San Francisco, CA*. February.
- ENVIRON Corporation. 1998b. *Technical Memorandum #1: Approach to a Plan for Risk Management, Mission Bay Project Area, San Francisco, CA*. April.
- ENVIRON Corporation. 1998c. *Technical Memorandum #3: North of Channel Screening-Level Ecological Risk Evaluation, Mission Bay Project Area, San Francisco, CA*. April.
- ENVIRON Corporation. 1999. *Development of Health-Based Interim Target Levels for the Mission Bay Project Area. San Francisco, CA*. April.
- Regional Water Quality Control Board (RWQCB). 1998a. *Information on Erosion and Sediment controls for Construction Projects: A Guidebook (Note: date in manual is not listed)*.
- Regional Water Quality Control Board (RWQCB). 1998b. *Erosion and Sediment Control Field Manual (Note: date in manual is not listed)*.

Reporting Checklist

Period of Development	Risk Management Measure	Reporting Requirement
Pre-Development	<ol style="list-style-type: none"> Access Restriction Measures <ol style="list-style-type: none"> Fences Asphalt/Concrete Cover Monitoring of Soil Stockpiles 	Annual report to RWQCB and SFDPH pursuant to Section 3.2(v) and Section 3.2 (vi).
During Development	<ol style="list-style-type: none"> Dust Control Measures Dust Monitoring Control of Off-site Runoff: Storm Water Pollution Prevention Plan Management of Soil Stockpiles Protocols to Manage/Control the Identification and/or Release of Unknown Contaminants from Underground Structures or USTs. 	<p><u>Prior to Commencement of Development</u></p> <ul style="list-style-type: none"> Submit dust monitoring notification to RWQCB and SFDPH pursuant to Section 4.3.1. Submit EHASP to RWQCB pursuant to Section 4.3.8 Notification to the RWQCB prior to initiation of development in the Free Product Area, pursuant to Section 4.4.2 (i). Submit site-specific SWPPP to RWQCB pursuant to Section 4.3.3 <p><u>During Development</u></p> <ul style="list-style-type: none"> Notification to RWQCB and SFDPH if daily average dust levels exceed the dust monitoring target concentration, pursuant to Section 4.3.2.2.7. Notification to RWQCB and SFDPH of the identification of unknown underground structures and unknown contaminants pursuant to Section 4.3.5.6. Annual report to RWQCB and SFDPH documenting inspections of soil stockpiles pursuant to Section 4.3.5.2.4. Quarterly status report to RWQCB and SFDPH during development pursuant to Section 4.3.9. <p><u>Conclusion of Development</u></p> <ul style="list-style-type: none"> Completion letter regarding cover submitted to the RWQCB and SFDPH pursuant to Section 4.3.10.
Post Development	<ol style="list-style-type: none"> Cover <ol style="list-style-type: none"> Asphalt/Concrete Landscaping No Single Family Homes No Use of Groundwater Subsurface Activities Conducted in Compliance with Health and Safety Protocols 	Annual report submitted to RWQCB and SFDPH pursuant to Section 5.3.5.

**INSPECTION/MONITORING SAMPLE FORM ^a:
PRIOR TO DEVELOPMENT**

Parcel ID: _____

Owner: _____

**Individual Conducting
Inspection:** _____

Date of Inspection: _____

1) FENCES

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

2) ASPHALT AND/OR CONCRETE COVER

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

3) SOIL STOCKPILES

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

^a The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

**INSPECTION/MONITORING SAMPLE FORM ^a:
LONG-TERM MONITORING AFTER DEVELOPMENT IS COMPLETE**

Parcel ID: _____

Owner: _____

**Individual Conducting
Inspection:** _____

Date of Inspection: _____

1) LANDSCAPED AREAS

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

2) ASPHALT AND/OR CONCRETE COVER

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

3) ARE SINGLE FAMILY RESIDENCES PRESENT?

Yes ☐ No ☐

Comment:

4) CONFIRMATION THAT GROUND WATER USE IS NOT OCCURING

Yes ☐ No ☐

Comment:

5) CONFIRMATION THAT SUBSURFACE ACTIVITIES CONDUCTED IN COMPLIANCE WITH HEALTH AND SAFETY PROTOCOLS

Yes ☐ No ☐

Comment:

^a The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

SCHEDULE 1

HAZARDOUS MATERIALS DISCLOSURE

Environmental Reports and Documents Regarding Hazardous Materials

Hazardous Substances

Reference List

December 18, 2024

- Baseline Environmental Consulting. 2014. Site History Report, Seawall Lot 337/Pier 48, Mixed-Used Project, San Francisco, California (DRAFT). April 14.
- Bay Area Environmental Group. 2019. Soil Management Plan – Lightweight Cellular Concrete Pilot Mission Rock, San Francisco, California. October 8.
- Bay Area Environmental Group. 2019. Soil Sampling and Characterization Report, Mission Rock Horizontal Phase, San Francisco, California. December 13.
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- Bay Area Environmental Group. 2020. Soil Sampling and Characterization Report, Mission Rock Vertical Phase, San Francisco, California. April 13.
- Bay Area Environmental Group. 2020. Soil Sampling and Waste Characterization Delineation Report, Mission Rock Vertical Phase, San Francisco, California. June 15.
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- Department of Public Health, Environmental Section. 2008. Remedial Action Completion Certification, Underground Storage Tank (UST) Case, Commercial Property, 145 China Basin Street, San Francisco, LOP Case Number: 10318. April 15.
- Department of Toxic Substances Control. 1992. RCRA Facility Assessment, for H & H Ship Service Co., Inc., Berkeley, California. October.
- Department of Toxic Substances Control. 2000. Closure Certification Approval for the Tank Cleaning Area, Container Storage Area, and Stabilization Unit at the Former H & H Ship Service Company, 220 Terry Francois Boulevard, San Francisco, California, EPA ID No. 004771168. January 27.
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- Department of Toxic Substances Control. 2018. Letter from DTSC to Carol Bach about revised Summary of Analytical Results from Previous Environmental Investigations and Preliminary Risk Assessment. February 16.
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Department of Toxic Substances Control. 2019. Letter from DTSC to Carol Bach about reviewed Soil Management Plan and Dust Control Plan. November 13.

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- Ramboll US Corporation. 2020. Soil Vapor Investigation Report, Former H & H Facility, Mission Rock Development Area – Block F, San Francisco, California. June 5.

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- Ramboll US Corporation. 2020. Soil Vapor Investigation Report, Former H & H Facility, Mission Rock Development Area – Block J, San Francisco, California. June 5.
- Ramboll US Corporation. 2020. Soil Vapor Investigation Report, Former H & H Facility, Mission Rock Development Area – Block K, San Francisco, California. June 5.
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Hazardous Substances

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SCHEDULE 2

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.



**Pacific Gas and
Electric Company®**

U 39

San Francisco, California

Cancelling Revised
Revised

Cal. P.U.C. Sheet No. 48553-E**
Cal. P.U.C. Sheet No. 32110-E

Electric Sample Form No. 62-4501
Absolving Service Agreement

Sheet 1

**Please Refer to Attached
Sample Form**

Advice 6050-E
Decision

Issued by
Robert S. Kenney
Vice President, Regulatory Affairs

Submitted February 4, 2021
Effective February 4, 2021
Resolution _____

**DISTRIBUTION:**

- ☐ Applicant (Original)
☐ Division (Original)
☐ Customer Care (Copy)

REFERENCE:

Absolving Service Agreement

1. _____
(Applicant) having requested Pacific Gas and Electric Company (PG&E), to supply all of the _____ service, hereinafter called "service," required for the operation of Applicant's equipment and apparatus, located at _____ County, State of California, PG&E shall, subject to the conditions hereof, install its distribution facilities without undue delay and supply such service in accordance with its applicable rates and rules established from time to time and on file with the Public Utilities Commission of the State of California, and as provided in a written agreement for service, if any, attached hereto and made a part hereof.
2. In order for PG&E to supply and/or for Applicant to receive such service, it will be necessary for (check appropriate item or items)
 - ☐ PG&E to utilize certain of its existing facilities considered by PG&E to be of questionable permanency.
 - ☐ PG&E to install and utilize certain of its facilities on property across which suitable permanent rights of way are not available on a basis acceptable to PG&E.
 - ☐ Applicant to use service facilities owned by the hereinafter named licensor.
 - ☐ Applicant to install and use service facilities on, over, or under property owned by the hereinafter named licensor.

Said facilities and/or property are shown and delineated on the map attached hereto and made a part hereof.
3. Applicant has represented and does hereby represent to PG&E that he has obtained permission to use the said certain service facilities and/or to install and use facilities on, over, and under property owned by the following named Licensor:
NAME _____
ADDRESS _____
4. Applicant shall hold harmless PG&E, its officers, agents, and employees from and indemnify them against any liability, claim, or loss for damage to any property or injury to or death of any person or persons in any way arising from or connected with the service facilities owned by Licensor or Applicant, as the case may be, used by Applicant to receive service hereunder and PG&E shall have no obligation with respect to the operation or maintenance thereof.
5. Should PG&E desire to remove or abandon its facilities of questionable permanency or in the event of the revocation of PG&E's or Applicant's right or permission to locate facilities on property owned by others or on lands across which suitable permanent rights of way are not available, or should Applicant's permission to use Licensor's facilities be terminated, or should Licensor's or Applicant's facilities at any time become unsafe or unsuitable in PG&E's opinion for transmitting service, PG&E shall have the right to remove or abandon any of its facilities and discontinue service to Applicant and in any such event, PG&E, shall be absolved of and from any and all liability to Applicant for and Applicant shall indemnify PG&E, its officers, agents and employees against any and all damage, whether to person or property, which Applicant or any third party may suffer by reason of or in any way connected with such discontinuance of service. PG&E will relocate its facilities upon request provided suitable rights of way are available therefore and Applicant first pays to PG&E the cost of such relocation as estimated by PG&E.

† Information collected on this form is used in accordance with PG&E's Privacy Policy.
The Privacy Policy is available at pge.com/privacy.



Absolving Service Agreement

6. All service furnished by PG&E to Applicant will be supplied at the connection between Applicant's or Licensor's facilities, as the case may be, and PG&E's facilities, hereinafter called "point of delivery," and will be transmitted therefrom by Applicant at latter's own risk, provided, however, that for the convenience of the parties hereto, but without in any way changing said point of delivery PG&E may transform or regulate and meter said service at a point agreeable to the parties hereto.
7. Applicant may, with PG&E's written consent, assign this contract if the assignee thereof will in writing agree to be bound by all terms and conditions hereof applicable to Applicant and the terms and conditions of any then effective service agreement between the parties hereto for service to said property.
8. This agreement shall remain in force so long as PG&E provides service to Applicant on said property unless earlier terminated by mutual agreement by the parties hereto.
9. This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

Executed this _____ day of _____, 20____

This agreement is effective when accepted and executed by PG&E.

	PACIFIC GAS AND ELECTRIC COMPANY
_____ Customer/Company	_____
_____ Authorized by (Print)	_____ Authorized by (Print)
_____ Signature	_____ Signature
_____ Title	_____ Title
_____ Date	_____ Date

Applicant's Mailing Address



**CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR**

LICENSE NO. XXXX

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**MISSION ROCK UTILITIES, INC.
A DELAWARE CORPORATION**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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EXHIBITS

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EXHIBIT B	ESTOPPEL CERTIFICATE
EXHIBIT C	SOIL MANAGEMENT PLAN
EXHIBIT D	MAINTENANCE PLAN
EXHIBIT D-1	MAINTENANCE MONITORING AND REPORTING PROGRAM
SCHEDULE 1	HAZARDOUS MATERIALS DISCLOSURE
SCHEDULE 2	FEMA DISCLOSURE NOTICE

BASIC LICENSE INFORMATION

<i>License Date:</i>	_____, 202XX
<i>License Number:</i>	
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400
<i>Licensee:</i>	MISSION ROCK UTILITIES, INC. a Delaware corporation ("MRU" or "Licensee")
<i>Licensee's Notice and Billing Address:</i>	Mission Rock Utilities, Inc. 305 St. Peter Street St. Paul, MN 55102 Attn: <i>With a copy to:</i> Mission Rock Utilities, Inc. 305 St. Peter Street St. Paul, MN 55102 Attn: General Counsel
<i>Licensee's Contact for Operational Matters</i>	Patrick Lum, Chief Engineer Phone Number: (415) 793-5291 Email Address: plum@Tishmanspeyer.com Mailing Address: 1 Bush Street, Suite 450 San Francisco CA, 94104 and Michael Burns, SVP Operations Phone Number: (651) 925-8132 Email Addresses: michael.burns@ever-greenenergy.com Mailing Address: 305 St. Peter St. St. Paul, MN 55102
<i>Licensee's Emergency Contact and Address:</i>	Telephone:

<i>Licensee's Insurance Contact and Address (not broker):</i>	Telephone:
<i>Contact Information for Licensee's Agent for Service of Process:</i>	1505 Corporation CSC – Lawyers Incorporating Service 2710 Gateway Oaks Dr. Sacramento, CA 95833
<i>License Area:</i>	<p>The License Area is comprised of:</p> <p>License Area 1 (Non Potable Water), which is approximately 6,788 rentable square feet of land, which is a portion of Bridgeview Way Paseo (Assessor Parcel Number 8719A-007), China Basin Park (Assessor Parcel Number 8719-A005), and Dr. Maya Angelou Way (Assessor Parcel Number 8719-B001; and</p> <p>License Area 2 (District Energy Distribution System), which is approximately 8,325 rentable square feet of land, which is a portion of Bridgeview Way Paseo (Assessor Parcel Number 8719A-007), China Basin Park (Assessor Parcel Number 8719-A005), and Dr. Maya Angelou Paseo (Assessor Parcel Number 8719-B001; and</p> <p>License Area 3 (Sanitary Sewer), which is approximately 2,760 rentable square feet of land, which is a portion of China Basin Park (Assessor Parcel Number 8719-A005), and Dr. Maya Angelou Paseo (Assessor Parcel Number 8719-B001),</p> <p>each within Mission Rock in the City and County of San Francisco, State of California and as depicted on <i>Exhibit A</i>, which exhibit is attached hereto and made a part hereof, together with any and all improvements and alterations thereto.</p> <p>The License Area is within a public open space.</p> <p>The above-ground areas of the License Area may not be obstructed, blocked or impeded in any way by Licensee, except in connection with: (1) any Permitted Activities where all required Regulatory Approvals and any other approvals required hereunder have been obtained (including but not limited to maintenance or repair of the Utility Facility), (2) in the case of an emergency in accordance with the Additional Conditions to Permitted Activities section, below, or (3) approved Surface Level Improvements.</p>
<i>Utility Facility:</i>	The underground systems used for the treatment of wastewater, the distribution of recycled water, and thermal heating and cooling services to the Serviced Building and approved Surface Level Improvements. Unless otherwise

	indicated, reference herein to “Utility Facilities” includes Surface Level Improvements.
<i>Length of Term:</i>	Sixty-six (66) years.
<i>Commencement Date:</i>	[Note: Insert the date the License is fully executed, after all necessary approvals, including Board approval of this License]
<i>Expiration Date:</i>	_____, 20XX [Note: Insert the date that is 66 years after the Commencement Date].
<i>License Fee:</i>	Zero Dollars (\$0.00)
<i>Security/Guarantee Deposit:</i>	<p>Licensee acknowledges that it may be required to provide security in an amount agreed to by the Parties in Year 15 of the Term as sufficient to ensure the safe Abandonment in Place and removal of the Improvements and any necessary associated right-of-way restoration as described in Section 13 of this License (“Security”). The Security may be provided by: (i) a capital reserve that Licensee must commence funding in Year 16 of the Term and continue funding until the earlier of Year 30 or when fully funded; or (ii) if Licensee chooses to provide security under its Global Master Encroachment Permit, dated [date], (GMEP) via a bond, Port will also require a bond that substantially conforms to the bond provided under the GMEP; or (iii) Licensee may provide a bond for the Security at any time. Any such bond must comply with the requirements of the Port.</p> <p>Port and Licensee will meet and confer in Year 15 of the Term to determine the amount, timing, use and form of Security, including the requirements for a capital reserve. The Port, in its sole discretion, may elect to alter the terms of any capital reserve.</p>
<i>Permitted Activities:</i>	The License Area shall be used solely for the operation, maintenance, repair and replacement of the Utility Facility located within the License Area and for no other purpose, as further described in Section 4 , and subject to the immediately following “ Additional Conditions to Permitted Activities ” row of this Basic License Information.
<i>Additional Conditions to Permitted Activities:</i>	(i) Except in the event of an emergency where no prior written notice to Port is required, Licensee will provide Port at least 30 days’ prior written notice before

	<p>performing any maintenance or repair of the Utility Facility that requires the License Area be blocked off for more than 4 hours. Licensee's notice will include the dates, hours, and a description of the work/plans/specifications of the maintenance or repair, including any permits required, that Licensee proposes in the License Area. If Port reasonably objects to any aspect of Licensee's proposal, then Port will have 15 days to object in writing. Licensee will use its good faith efforts to address Port's objections, including but not limited to changing the proposed dates/hours to dates/hours that are reasonably acceptable to Port.</p> <p>(ii) Licensee agrees to comply with Section 5 regarding Sidewalk Closures of the Regulations for Working in San Francisco Streets (dated December 2022). The regulations may be found at: https://www.sfnta.com/reports/construction-regulations-blue-book</p> <p>(iii) During the major league baseball season and to the extent reasonably possible, Licensee will conduct planned Permitted Activities on non-home game days of the San Francisco Giants. The foregoing shall in no way limit Licensee's ability to access the License Area to address emergencies.</p> <p>(iv) All applicable provisions of the Mitigation, Monitoring and Reporting Program adopted as part of the Final Environmental Impact Report for the Seawall Lot 337 and Pier 48 Mixed-Use Project shall apply to Licensee's activities pursuant to this License.</p> <p>(v) [PENDING FORTHCOMING ORDER FROM DPW, which shall be finalized prior to introduction at Board of Supervisors: Port anticipates requiring a Maintenance Plan and regular maintenance/operations updates for the Utility Facility in the License Area, physical plant(s), and production facilities. Port anticipates one plan and updates will satisfy obligations for both GMEP and Port license.]</p> <p>(vi) Licensee shall participate in the Street Utilities Coordination Committee, the Committee for Utility Liaison on Construction and Other Projects, and the Committee for Planning Utility Construction Program, established by Sections 5.60 and 5.63 of the City's Administrative Code, or any successor organizations established by the San Francisco Department of Public Works (DPW), in the manner prescribed by DPW. Licensee shall take all reasonable precautions to protect all other facilities located under the street. <i>[City Drafting Note – Public Works to provide additional details.]</i></p>
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	<p>(vii) In accordance with the provisions of Chapter 3.1 of Division 5 of Title I of the California Government Code (Section 4216 <i>et seq.</i>), Licensee as an operator of a subsurface installation shall obtain and maintain membership in a regional notification center (e.g., Underground Service Alert - Northern California), and shall otherwise comply with the provisions of the referenced chapter, division and title. Prior to the Effective Date, Licensee shall furnish written proof of such membership to the Port. Repeal of any Applicable Law requiring such membership shall not negate Licensee's obligation to maintain such membership.</p> <p>(viii) Licensee must at all times during the Term be in substantial compliance with Licensee's GMEP. A default under the GMEP shall constitute an Event of Default under this License; provided, however, that no default under the GMEP will be considered an "Event of Default" under this License unless and until Licensee has had an opportunity to cure pursuant to the terms of the GMEP, and that upon effectuating any such cure, the corresponding Event of Default under this License shall be deemed cured.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 4.3, Licensee shall be prohibited from using the License Area for any of the following activities:</p> <p>(a) Parking of any vehicles or placement of any equipment in the License Area, except for temporary equipment and vehicles in connection with the Permitted Activities;</p> <p>(b) Excavating any areas adjacent to or near the License Area that are comprised of lightweight cellular concrete;</p> <p>(c) Interfering with or damaging the Other Utilities within, around, about or near the License Area; and</p> <p>(d) Obstructing access to any Other Utilities and other facilities owned and operated by Port and the City at any time within the License Area.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<i>Cure Period where applicable:</i>	Defined in Section 22.1.
<i>Maintenance and Repair:</i>	Sole responsibility of Licensee and in compliance with the requirements of the Maintenance Plan and Maintenance Monitoring and Reporting Program attached hereto as Exhibits D and D-1 .
<i>Utilities and Services:</i>	Sole responsibility of Licensee—no exceptions

<p><i>Lightweight Cellular Concrete:</i></p>	<p>Working within areas comprised in whole or in part of LCC require compliance with additional and/or different Regulatory Approvals and procedures than areas comprised of typical pavement base and asphalt concrete wearing surface applied in other areas of the City. Licensee acknowledges and accepts that the additional and/or different Regulatory Approvals and procedures may result in additional costs to Licensee to repair and backfill any excavated areas.</p> <p>[PENDING FORTHCOMING ORDER FROM DPW, which shall be finalized prior to introduction at Board of Supervisors: insert reference to LCC excavation and backfill requirements].</p> <p>Licensee must promptly notify Port if its activities under this License result in any contact with or penetration of any LCC, will comply with all such reasonable requirements and procedures regarding LCC, and will be responsible for all costs associated with backfilling and/or repairing any damage resulting from such contact or penetration, as directed by Port or its designee.</p>
<p><i>Development Project:</i></p>	<p>Mission Rock, as further described in <i>Section 1.3</i>.</p>
<p><i>Prepared By:</i></p>	

[Remainder of page intentionally left blank.]

NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY NO. XXXXX

THIS NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY (this “**License**”) is dated as of the License Date set forth in the Basic License Information, for reference purposes only, by and between the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), and **MISSION ROCK UTILITIES, INC.** (“**MRU**” or “**Licensee**”), a Delaware corporation. City and Licensee will sometimes hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”. The Basic License Information and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this “**License**.”

RECITALS

A. Port owns the License Area described in the Basic License Information. The License Area is within the area known as Seawall Lot 337, located south of Mission Creek/China Basin Channel in the Mission Bay neighborhood (the “**Project Site**” or “**Mission Rock**”), as more particularly described in that certain Disposition and Development Agreement dated August 15, 2018, by and between Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns, “**Horizontal Developer**”), and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Horizontal DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”).

B. Licensee will construct, operate and maintain the Utility Facility within the License Area which Utility Facility will provide systems used for the treatment of wastewater, the distribution of recycled water and thermal heating and cooling services to the Serviced Buildings. The License Area is owned by the Port. The License Area is generally used as open space, including for pedestrian access paseos that are open to the public at all times.

C. Pursuant to **Port Commission Resolution No. XXXX** adopted on **XXXXXXXX**, the Port Commission authorized the Port Executive Director to execute this License under the terms and conditions provided herein, subject to approval by the Board of Supervisors, which was granted by the Board of Supervisors in **Resolution No. XXXXX on XXXXXXXX**.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, PORT AND LICENSEE HEREBY AGREE AS FOLLOWS:

1. GRANT OF LICENSE.

1.1. License Area. Port hereby grants to Licensee a non-exclusive license to enter upon and use the License Area described in the Basic License Information for the Permitted Activities.

(a) Mutual Adjustment of License Area. From time to time during the Term, the Parties reserve the right, upon mutual agreement of Port and Licensee, to modify the License Area, including to accommodate the completion of subsequent construction and any subsequent improvements as approved by Port.

(b) Memorandum of Technical Corrections. In addition, the Parties reserve the right, upon mutual agreement of Port and Licensee, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the License Area, and upon full execution thereof such memoranda shall be deemed to become a part of this License.

1.2. Other Utilities. Licensee acknowledges and understands that its Utility Facility is near other utility infrastructure and systems (collectively, “Other Utilities”). It is Licensee’s sole responsibility to ensure that the Permitted Activities do not adversely impact the Other Utilities, whether pre-existing or later installed pursuant to **Section 10**, below. Licensee is solely responsible for all costs and damages to the Other Utilities from the Permitted Activities.

1.3. Mission Rock Development . Licensee acknowledges that the License Area is within the Mission Rock development site. Accordingly, there will be construction and activities associated with such construction within, adjacent to, and near the License Area throughout the Term which will generate certain adverse impacts that may result in inconvenience to or disturbance of Licensee (provided that physical damage resulting from such construction and associated activities shall be redressed). Impacts may include, but are not limited to, coordinating date and time of routine maintenance of the Utility Facility with both vertical and horizontal developers, Port tenants, subtenants and other users within the Mission Rock development site, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Licensee hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance, except for failure to redress physical damage resulting from construction and associated activities.

2. CONDITION OF PROPERTY.

2.1. AS IS Condition. Licensee acknowledges that Port has made no representations or warranties concerning the License Area shown, including without limitation, the environmental or seismological condition thereof. Licensee acknowledges its receipt of **Schedule 1** regarding the presence of certain Hazardous Materials and the FEMA disclosure notice attached as **Schedule 2** and Licensee accepts these areas “AS IS”, “WITH ALL FAULTS.” Licensee shall maintain the License Area and any other areas used in connection with this License so they will not be unsafe, unsightly or unsanitary as a result of the Permitted Activities. Licensee represents and warrants to Port that Licensee has investigated and inspected, either independently or through agents of Licensee’s own choosing, the condition of each of these areas and their suitability for Licensee’s business and intended use. Licensee acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the seismological, physical or environmental condition of these areas, the present or future suitability of these areas for Licensee’s business, or any other matter whatsoever relating to these areas, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

2.2. Accessibility. Licensee is hereby advised that the License Area has not been inspected by a Certified Access Specialist (“CASp”) for accessibility issues. Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards. Licensee understands and agrees that it may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws as a result of Licensee’s Permitted Activities.

3. TAXES AND ASSESSMENTS.

3.1. General. Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into resulting from Licensee’s possession, use, or occupancy of the License Area under this License, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy of the License Area by Licensee under this License (as distinguished from the ownership of the License Area). Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment

permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Effective Date. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

3.2. Possessory Interest Tax. Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any sublease or assignment permitted under this License and any exercise of any option to renew or other extension of this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by Law, all of which shall be paid when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the License Area or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Commencement Date. Licensee shall timely provide any information to the Port or City that may reasonably be requested to ensure compliance with this or any other reporting requirement.

4. USE OF THE LICENSE AREA.

4.1. Permitted Activities. Subject to obtaining all required Regulatory Approvals and compliance with the terms and conditions of this License, Licensee may: use the License Area for the sole purpose of constructing, operating and maintaining, at Licensee's sole expense and risk, the Utility Facility, including but not limited to the right to excavate, repair, reconstruct, maintain, replace within the License Area, and remove such Utility Facility (collectively, the "**Permitted Activities**"). Any activities other than the Permitted Activities shall require Port's advance written approval, which Port may offer in its sole discretion.

4.2. Non-Interference. Licensee acknowledges and agrees that Licensee's exercise of the rights herein granted shall not impede or interfere with the use of the above-ground portion of License Area by Port and its tenants, subtenants, invitees, and members of the public without the prior written consent of Port or the Other Utilities as further described in **Section 1.2**, provided however that Port acknowledges the restrictions on its approvals and activities set forth in **Section 10(b)** of this License. Licensee shall notify and keep Port and if requested by Port, Port tenants, the master association of Mission Rock, and private property owners, informed of its activities under this License in accordance with the "**Additional Conditions to Permitted Activities**" row of this Basic License Information.

4.3. Prohibited Uses. Licensee shall use the License Area solely for the Permitted Activities and for no other purpose. Any other use in the License Area, including but not limited to the Prohibited Uses identified in the Basic License Information, waste, nuisance or

unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property except for the restrictions set forth in **Section 10(b)** of this License, obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) is prohibited (each, a "**Prohibited Use**"). Use of the Utility Facility by any party other than Licensee or its Agents without Port's prior written consent pursuant to **Section 20.4**, is a Prohibited Use. For the avoidance of doubt, an Assignee approved in accordance with this License may use the Utility Facility.

In the event after inspection of the License Area by the Port that a Prohibited Use is occurring on the License Area, then Licensee shall immediately cease the Prohibited Use and shall pay to Port, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00), subject to increases set forth below, upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**") within thirty (30) calendar days after delivery of written notice. In subsequent inspection(s) of the License Area if Licensee has not ceased the prior-cited Prohibited Use within thirty (30) calendar days, then Licensee shall pay to Port, as an additional charge, an amount equaling Four Hundred Dollars (\$400.00), subject to increases set forth below, for each additional thirty (30) calendar day Notice to Cease Prohibited Use delivered to Licensee. The Parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area. Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity. The amounts set forth in this Section shall be due within sixty (60) calendar days following delivery of the applicable Notice to Cease Prohibited Use.

Each charge set forth in this Section and in **Sections 8.3** (Additional Charges) shall be increased by one hundred dollars (\$100.00) on every tenth (10th) Anniversary Date after the Effective Date. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

5. EFFECTIVE DATE.

This License shall become effective on the first date (the "**Effective Date**") that all of the following conditions are satisfied:

- (a) The Port Commission authorizes execution of this License by the Port Executive Director;
- (b) The Board of Supervisors, authorizes execution of this License; and
- (c) The Parties fully execute this License.

6. TERM OF LICENSE.

This License shall be for a term ("**Term**") commencing on the Effective Date and expiring on the day that is 66 years from and after the Effective Date (the "**Expiration Date**"). The License shall be irrevocable during the Term unless terminated, in whole or in part, in accordance with either of the following: (a) Licensee delivers written notice to Port of its relinquishment and termination of any or all of the rights granted hereunder; or (b) upon an Event of Default as described in Section 22 below.

7. INTENTIONALLY DELETED.

8. FEES.

8.1. General. All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to Port and delivered to Port's address specified in **Section 25**, or such other place as Port may designate in writing.

8.2. License Fee.

(a) **During the Term.** If the Port Commission and the Board of Supervisors approve, there will be no license fee charged to Licensee for use of the License Area during the Term.

(b) **After the Term.** Upon the expiration of this License, Licensee and Port shall meet and confer to any monthly license fee for Licensee's continued use and/or occupancy of the License Area.

8.3. Additional Charges. Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate Party, upon written notice from the Port, the items identified in 16.4(a) (Licensee's Environmental Condition Notification Requirements); 16.5 (Storm Water Pollution Prevention); 34.1 (Non-Discrimination); and **Exhibit B** (Estoppel Certificate); or to provide evidence of the required insurance coverage described in Section 21, then upon written notice from Port of such failure, Licensee shall pay, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00), as increased subject to Section 4.3. In the event Licensee fails to provide the necessary document within thirty (30) calendar days after delivery of such written notice and Port delivers to Licensee an additional written notice requesting such document, then Licensee shall pay to Port, as an additional charge, an amount equaling Three Hundred Fifty Dollars (\$350.00), as increased subject to Section 4.3 for each additional thirty (30) calendar days written notice Port delivers to Licensee requesting such document. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. The amounts set forth in this Section shall be due within thirty (30) business days following delivery of the written notice of such failure to submit the documents identified herein. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

8.4. Returned Checks. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission).

9. INTENTIONALLY DELETED.

10. SUBJECT TO OTHER USES.

Licensee acknowledges and agrees that this License herein granted is for Licensee's non-exclusive use and that Port shall have the right to use or permit the use by others of the License Area for any use that does not substantially interfere with the rights granted to Licensee herein, provided that,

(a) Notwithstanding the generality of the foregoing, Licensee acknowledges its obligations in **Sections 1.2** and **4.2**.

(b) Subject to the last sentence of this paragraph, Port will notify Licensee if Port intends to issue a license, lease or other written agreement to another party for any subsurface uses within the License Area. Notwithstanding the foregoing, the Port will not place or construct, nor issue permits for a third party to place or construct, any building or other structure, or store flammable substances, or other non-movable obstruction, or substantially add to or diminish the ground level within the License Area; provided however, the Port may issue permits and/or allow movable street furniture such as tables and chairs in the License Area. The Port will reasonably assist Licensee to require the removal or relocation of any unauthorized uses under this Section.

11. INTENTIONALLY DELETED.

12. REPAIR AND MAINTENANCE.

Licensee shall maintain and monitor the License Area and the Utility Facility at its sole costs and in accordance with the Maintenance Plan and the Maintenance Monitoring and Reporting Program prepared by Licensee and approved by Port, and attached hereto as ***Exhibit D*** and ***Exhibit D-1***. Within ten (10) business days from the date of the Port's written request for maintenance information, Licensee shall provide proof that maintenance activities have been performed according to the requirements and frequency of the Maintenance Plan. Licensee shall: (a) on a regular quarterly basis, document the general condition of the entire Licensee Area and all elements consistent with the Maintenance Plan; and (b) maintain a written and image log of all maintenance issues, including, but not limited to: defects, damages, defacing, complaints, and repairs performed in the License Area (the "Maintenance Report"). The images for the logged maintenance issues and repairs shall clearly show the location and detail of the damaged or defaced element or area, and its repair and restoration. Licensee shall maintain all files and provide them, when requested by City, in a format and media consistent with current standards for data retention and transfer, such as a USB flash drive with connective capability to a commonly available personal computer.

12.1. Capital Planning. Licensee shall prepare an operations and maintenance ("O&M") budget that shows projected revenues and expenses for the next [*City Drafting Note: Public Works to specify time frame.*] calendar years that indicates the percentage and amount of revenues set aside as cash reserves for capital improvements and routine maintenance and the balance of such cash reserves. Annually, no later than **[March 1]**, Licensee shall submit an updated O&M budget along with the actual O&M budget for the prior calendar year.

12.2. Abatement of Unsafe, Hazardous or Damaged Conditions. Licensee, at its sole cost and expense and in no later than thirty (30) days (unless Licensee requests and Port provides written approval authorizing one or more additional thirty-day periods), (a) shall repair and maintain the Utility Facility and the License Area as necessary to prevent threats to health, safety or the environment and may make other repairs all in compliance with all applicable Laws.

12.3. Lightweight Cellular Concrete. If Licensee digs, excavates, or otherwise damages any portion of the License Area or surrounding area as a result of the Permitted Activities, without limiting its obligations described in the "***Lightweight Cellular Concrete***" row of the Basic License Information, Licensee shall restore said portion of the License Area (including any surrounding area damaged or affected by such action) as nearly as reasonably possible to its condition prior to such action, including without limiting the generality of the foregoing, pavement (including any special or unique pavement unless Port requests in writing, in each instance, that Licensee restore the pavement with standard asphalt covering), sidewalks, lawns and shrubs, and any other improvements owned by the Port or City, and as may be required by Regulatory Approvals. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. Licensee acknowledges and agrees that, except in the case of an emergency, without limiting the conditions set forth in the "***Additional Conditions to Permitted Activities***" row of the Basic License Information, Licensee shall use commercially reasonable efforts to provide advance written notice, and shall obtain all Regulatory Approvals (along with full payment of all fees and charges associated with obtaining the same), and shall coordinate with Port (and at Port's request, the Master Association for the Mission Rock development or such other Port designee) prior to performing any repair or maintenance of the Utility Facility permitted under this License.

13. SURRENDER; EQUIPMENT REMOVAL PLAN.

Licensee shall surrender the License Area clean, free of debris, waste, and Hazardous Materials caused or permitted by Licensee or the Permitted Activities, and free and clear of all

liens and encumbrances created by or benefitting Licensee. Upon the expiration or earlier termination of this License, with respect to a portion or portions of the License Area, Licensee may Abandon in Place or remove the affected Utility Facility therein and complete any necessary backfilling and restoration of hardscape or landscape to Port and/or City's standards or as the City deems appropriate under the circumstances at Licensee's sole cost (with such backfilling and hardscape or landscape restoration required by Port) by (i) applying for, and providing the materials necessary to obtain, authorization from City for the performance of such restoration work; (ii) performing such restoration work pursuant to the terms and conditions of City's authorization; and (iii) warranting that the restoration work with a duration not less than one (1) year from the date the City confirms that the work is complete subject to any extension that the City may grant in the City's discretion. The City may authorize the abandonment of a portion of the Utility Facility in place subject to industry-standard or other applicable regulatory requirements regarding the safe decommissioning and abandonment of similar facilities and the Licensee's provision of security to cover the costs incurred by City departments to locate and perform construction around abandoned Utility Facility (hereafter, "**Abandonment in Place**").

As a condition of Abandonment in Place, Licensee shall be required to submit a fee of Four Thousand Dollars (\$4,000) to the City, for any component or segment of the Utility Facility Abandoned in Place, to cover the costs that may be incurred by City departments to locate and perform construction around any portion of the abandoned Utility Facility. Licensee will submit the fee, which will be adjusted annually based on the Consumer Price Index for All Urban Consumers (San Francisco Area), at the time of Abandonment in Place.

Notwithstanding the foregoing, if the Director of the Department of Public Works determines, based on additional technical or engineering data, that Abandonment in Place would be detrimental to the performance of LCC, public right-of-way infrastructure or public utilities, the City may require removal of the affected component or segment of the Utility Facility.

13.1. Removal, Restoration and Abandonment Fund. Commencing in Year 16 of the Term, Licensee must, if required by Port, provide the Security described in the "**Security/Guarantee Deposit**" row of the Basic License Information to ensure the safe Abandonment in Place and removal of the Utility Facility and any necessary associated right-of-way restoration. If the Security is provided via the establishment of a capital reserve account, the Security will not be used for Licensee's ongoing maintenance obligations. If Licensee fails to respond to a corrective notice or if there is an uncured Event of Default related to the Utility Facility, City may withdraw funds from the capital reserve account to cover the costs of the Event of Default associated with the Utility Facility.

(a) Should Licensee fail to remove the Utility Facility or convey title to any remaining improvements pursuant to the requirements of this Section, Licensee agrees it will be deemed abandoned. Licensee hereby waives the benefits of California Civil Code Section 1993, to the extent applicable.

(b) If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

(c) Licensee's obligation under this Section shall survive the expiration or earlier termination of this License until the abandonment, transfer, or removal of the Utility Facility in accordance with this License.

14. REQUIRED REMOVAL OR RELOCATION OF THE UTILITY FACILITY.

Licensee agrees that it will remove or relocate without expense to Port or City any Utility Facility installed, used and maintained under this License, if and when such removal or relocation is made necessary by any lawful change of grade, alignment or width of any street or

right of way, or by any work to be performed under the governmental authority of Port or the City and upon written notice of the same by Port or City. After receipt of a notice requesting relocation/removal of the Utility Facility, Licensee and the Port/City will use commercially reasonable and technically feasible efforts to facilitate the Port's/City's design and engineering of any Port or City project requiring such removal or relocation to minimize time and expense to both Parties. The Parties will negotiate in good faith to amend this License to the extent necessary to reflect the new License Area.

In the event that: (a) applicable law prohibits the removal or relocation of the Utility Facility; or (b) the required relocation would render the Utility Facility permanently unusable and thereby defeat the purpose of this License or; (c) despite Licensee's good faith efforts, a Regulatory Agency having jurisdiction over the Utility Facility prohibits Licensee from removing or relocating the Utility Facility; or (d) the Port or City can reasonably redesign or reroute such work at significantly less cost than the cost to Licensee to relocate or remove the Utility Facility, Port and Licensee agree to negotiate in good faith to allow for the Port or City to proceed in an alternative manner acceptable to all Parties, as evidenced in writing signed by Licensee and Port or City, as applicable, conditioned on Licensee bearing all commercially reasonable costs of the City/Port alternative.

To the extent that all or any portion of the License Area is surrendered as a result of a removal or relocation of the Utility Facility as provided by this Section, Licensee shall comply with the provisions Section 13 (Surrender/Equipment Removal Plan).

15. COMPLIANCE WITH LAWS; PORT ACTING AS REAL PROPERTY OWNER.

15.1. *Compliance with Laws.* All activities performed on the License Area by Licensee its Agents shall be done in accordance with all then applicable Laws.

15.2. *Proprietary Capacity.* Licensee understands and agrees that Port is entering into this License in its capacity as a property owner with a proprietary interest. Except as specifically stated herein, Licensee further understands and agrees that no approval by Port for purposes of this License shall be deemed to constitute any approval required by any federal, state, regional or City authority. Before beginning any work in the License Area, Licensee shall obtain any and all necessary permits and other Regulatory Approvals for conducting the Permitted Activities and shall maintain such approvals as necessary throughout the Term of this License. Promptly upon receipt of such approvals, Licensee shall use commercially reasonable efforts to deliver copies to Port, and in any case upon request by the Port. Port shall cooperate with Licensee, at no cost to Port, to the extent necessary to obtain applicable approvals. To the fullest extent permitted by Law, Licensee agrees to indemnify and hold the Indemnified Parties harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval. The indemnity obligation in this paragraph shall survive the expiration or termination of this License.

15.3. *Regulatory Approval.* Licensee understands that Licensee's activity on the License Area may require Regulatory Approval(s). Licensee shall be solely responsible for obtaining any such Regulatory Approval. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by Port or would create obligations on the part of Port or owners of the Other Utilities (whether on or off of the License Area), other than those expressly acknowledged in Section 10(b) of this License, to perform or

observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

Without limiting the terms and conditions of this Section, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any governmental officials, departments, boards, commissions or agencies responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a regulatory agency of the City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activities on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

16. HAZARDOUS MATERIALS.

16.1. *Compliance with Environmental Laws.* Licensee will comply and cause its Agents and Invitees, while in, on, or under the License Area, to comply with all Environmental Laws, Operations Plans (if any), the Soil Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices disclosed to Licensee, and any additional soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Utility Facility or the License Area. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed, conditioned or withheld, Handle, nor permit the Handling of, Hazardous Materials in, on, or under the License Area, except for (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, and (b) those Hazardous Materials reasonably necessary to operate and maintain the Utility Facility, and which may be updated from time to time by Licensee upon prior written notice to Port, and (c) pre-existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

16.2. *Licensee Responsibility.* Licensee agrees to protect its Agents and the general public in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during the Term:

(a) Other than the Hazardous Materials existing prior to the Effective Date in the License Area, will not permit any Hazardous Materials to be present in, on, or under the License Area except as permitted under Section 16.1 and to the extent reasonably necessary for Licensee's operation and maintenance of the Utility Facility;

(b) Will not cause or permit any Hazardous Material Condition;

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or willfully or

knowingly permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Upon and after the Commencement Date, Licensee will be the “**Generator**” of any waste, including hazardous waste, resulting from Licensee’s Permitted Activities (other than to the extent the Horizontal Developer, Phase 1 Horizontal Developer or another vertical developer within Mission Rock is designated as the “Generator” and such designation is approved in writing by the Port’s Deputy Director of Planning and Environment); provided that the Port hereby approves Horizontal Developer and/or Phase 1 Horizontal Developer as the “Generator” of any waste resulting from such entity’s work on the License Area in connection with the first phase of the Mission Rock development; and

(e) Will comply with all provisions of the Soil Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually.

16.3. *Removal/Remedial Action of Hazardous Materials.*

(a) Nothing in this Section 16.3 shall limit the parties’ rights and obligations under Section 13 (Surrender/Equipment Removal Plan).

(b) After notifying Port in accordance with Section 16.4, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition caused or permitted by Licensee during the Term; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition, and will then provide such notice to Port in accordance with Section 16.4. Except as provided in the previous sentence, Licensee must obtain Port’s approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port’s approval of the work plan and continue diligently until Remediation is complete.

(c) In addition to its obligations under Section 16.3(b), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License any Hazardous Material Condition caused by Licensee’s or its Agents’ or Invitees’ Handling, Release or Exacerbation of Hazardous Materials during the Term.

(d) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port’s reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(e) Unless Licensee or its Subtenants or Agents or Invitees Exacerbate the Hazardous Materials Condition or Release Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date.

16.4. *Licensee’s Environmental Condition Notification Requirements.* The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, (ii) the Soil Management Plan, and (iii) Environmental Laws:

(a) Licensee shall notify Port upon the issuance of any environmental permit, approval or license issued by a Regulatory Agency related to Licensee’s activities on the License Area and shall provide Port with a copy of such documents as requested from Port from time to time, and shall provide to Port any hazardous waste generator identification numbers related to

the License Area issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency, to itself, its sublicensees or Agents.

(b) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 16.1, Handled, in, on, over or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environment condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use during the Term if such Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release (or Handling of Hazardous Materials, except in accordance with Section 16.1) within twenty-four (24) hours following such Release (or Handling).

(c) Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

(i) Any notice of the Release of Hazardous Materials (or Handling of Hazardous Materials, except in accordance with Section 16.1), in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area during the Term, or from any vehicles Licensee, or its Agents and Invitees use during the Term that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over or under the License Area during the Term or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use in, on, or under the License Area during the Term;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(d) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(e) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 16.4 upon Port's request.

(f) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area.

(g) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

16.5. Storm Water Pollution Prevention.

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting, if applicable. If requested by the Port, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning on-site operations, if applicable.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction storm water control provisions of the Statewide General Permit for Discharge of Storm Water from Small Municipalities and the San Francisco Storm Water Design Guidelines, subject to review and permitting by the Port.

16.6. Disclosure of Hazardous Materials. Licensee is hereby advised that Hazardous Materials may be present on the License Area, including elevated concentrations of petroleum hydrocarbons, polynuclear aromatic hydrocarbons, heavy metals, and other contaminants commonly found in public rights-of-way, fill and in Bay sediments as further described in the reports listed in *Schedule 1* attached hereto. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Licensee agrees to provide this information to its sublicensees, Agents, Contractors and Invitees in connection with their use of the License Area.

16.7. Failure to Comply. Failure to comply with this Section 16 shall constitute an Event of Default under Section 22.1(a) of this License. In the event of such default, Port shall have all rights available under this License and at law or equity including, without limitation, the right to continue this License and require Licensee to clean up such Hazardous Condition required of Licensee under this Section 16. If Licensee fails to clean up such Hazardous Condition required of Licensee, the Port may terminate this License and collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from Licensee's failure to cleanup of any Hazardous Condition required of Licensee under this Section 16.

16.8. Survival. Licensee's obligations under this Section 16 shall survive the expiration or earlier termination of this License.

17. NO COSTS TO PORT.

Licensee shall bear all costs or expenses of any kind or nature in connection with this License, including but not limited to, all costs of excavation, construction, operation, sampling, monitoring, testing, transporting and disposing of soil or groundwater and backfilling, and shall keep the License Area free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with the Permitted Activities.

18. REPAIR OF DAMAGE.

If any portion of the License Area, or any other property of Port or its Agents located on or about the License Area, is damaged by any of the Permitted Activities conducted by Licensee or its Agents, Licensee shall, at its own cost and expense, repair any and all such damage and restore said property to as nearly as reasonably possible, the condition that existed prior to such damage. If the damage does not create or result in an Emergency Condition (as defined in Section 22), then such repair and restoration shall be completed within a reasonable period but not longer than the time frame specified in Section 22 (Default; Remedies; Emergency Conditions).

19. INDEMNIFICATION.

19.1. General Indemnity. Subject to Section 19.4, Licensee agrees to and will Indemnify the City and Port from and against any and all Losses imposed upon or incurred by or asserted against the City and Port in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof caused by Licensee or its Agents, or that result from Licensee's Permitted Activities, and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee or its Agents, to the extent resulting from Licensee's use of the License Area under this License;

(b) any use, possession, or occupation of the License Area, and any operation, maintenance, or management of Licensee's Utility Facility in, or condition of the License Area or any part thereof related to the Permitted Activities;

(c) any latent, design, construction or structural defect relating to the Utility Facility, any other subsequent construction, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents related to the Permitted Activities;

(d) any failure on the part of Licensee or its Agents, as applicable, to perform or comply with any of the terms, covenants, or conditions of this License or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents; and

(f) any negligent acts or omissions of Licensee, or its Agents with respect to the Utility Facility, or in, on, under, or about the License Area.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 19.1 and subject to Section 19.4, Licensee agrees to Indemnify the City and Port from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition that occurred or was Exacerbated during the term of this License caused by any acts or omissions of Licensee or its Agents in, on, under, about, or to the License Area;

(ii) any Handling or Release of Hazardous Materials caused by Licensee or its Agents in, on, under, around or about the License Area during the term of this License as a result of the Permitted Activities;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the License Area during the term of this License caused by Licensee or its Agents as a result of the Permitted Activities;

(iv) failure by Licensee to comply with Environmental Laws applicable to the License Area; or

(v) claims by Licensee for exposure to Hazardous Materials in, on, under, around, or about the License Area arising during the Term.

(b) Losses under Section 19.2(a) includes:

(i) costs incurred in connection with any Investigation or Remediation required by any Environmental Regulatory Agency or in the restoration of the affected area to its condition before the Release, the actual reasonable costs incurred if such costs are incurred before Port tenders the Claim to Licensee, and the actual reasonable costs incurred if such costs are incurred after Port tenders the Claim to Licensee;

(ii) actual damages for diminution in the value of the License Area;

(iii) sums actually paid in settlement of claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties as a result of the Permitted Activities; and

(iv) reasonable attorneys' fees and costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this Section 19.2 due to Licensee's failure to comply with its Indemnification obligations to Port and the City under this License, Licensee must reimburse Port for Port's actual and reasonable costs within forty-five (45) days after notice from Port.

(c) Licensee understands and agrees that its liability to the City and Port under this Section 19.2, subject to Section 19.4, arises upon the earlier to occur of:

(i) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area as a result of either the Permitted Activities or the acts or omissions of Licensee or its Agents; and

(ii) the Exacerbation of any Hazardous Material Condition caused by Licensee or its Agents, or resulting from the Permitted Activities; or

(iii) the institution of any Hazardous Materials Claim with respect to such Release of Hazardous Materials or Exacerbation of Hazardous Material Condition resulting from the Permitted Activities or the acts or omissions of Licensee or its Agents, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in Section 19.4, Licensee's Indemnification obligations under this License are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City and Port. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the City and Port from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at

the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this License are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this License, at common law or otherwise.

19.4. Exclusions from Indemnification. Nothing in this Indemnity relieves the City or Port from liability, nor will the Indemnities set forth in Sections 19.1 and 19.2, or the defense obligations set forth in Section 19.3 extend to Losses:

(a) to the extent caused by the gross negligence or willful misconduct of the City or Port; or

(b) from third parties' claims for exposure to, or Release or Handling of, Hazardous Materials or a Hazardous Material Condition in, on or under any portion of the License Area prior to the Effective Date of this License, or that are not a result of Licensee's or its Agents' acts or omissions, the Utility Facility, or the Permitted Activities.

19.5. Survival. Licensee's Indemnification obligations for Losses that arise during the term of this License shall survive the expiration or earlier termination of this License.

20. ASSIGNMENT; USE BY OTHERS.

20.1. Assignment; Port Consent Required. This License is personal to Licensee and shall not be assigned, except with the written consent by Port, which shall not be unreasonably withheld; provided, however, that Licensee shall have the right, with notice delivered at least sixty (60) days prior to the assignment, to assign Licensee's interest in this License to an Affiliate (a "**Permitted Assignee**") without the prior written consent of Port so long as the Permitted Assignee assumes all of Licensee's obligations under this License.

20.2. Request for Assignment. Except in connection with an assignment to a Permitted Assignee, Licensee shall give Port at least one hundred twenty (120) days prior written notice of any desired assignment (herein "**Notice of Request to Assign**") and shall provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed assignee, (b) the current balance sheet and profit and loss statements (herein "**financial statements**") for the proposed assignee and for any other entity or person who is to be liable for Licensee's obligations under this License, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the assignment (or for such shorter period as the proposed assignee or other person may have been in existence), (c) a full description of the terms and conditions of the proposed assignment, including copies of any and all proposed assignment agreements or other documents and instruments concerning the proposed assignment, (d) a Pre-screening and Leasing Application, or other similar document, completed by the proposed assignee and delivered to Port, and (e) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed assignment and the prospective assignee. Licensee's Notice of Request to Assign shall not be deemed to have been served or given until such time as Licensee has provided Port with all information set forth hereinabove. Licensee shall immediately notify Port of any modifications to the proposed terms of the assignment.

If Port consents to the Assignment, Licensee must close the Assignment on the terms stated in the Notice of Request to Assign within one hundred twenty (120) days after Port notifies Licensee of Port's consent. If the assignment agreement does not close within the 120-day period, then Port's consent will expire, unless Licensee gives Port a new Notice of Request to Assign, in which case Port again will be entitled to exercise any of the options under this Section.

20.3. Required Provisions in Every Assignment. Each and every assignment agreement shall contain the following provisions:

(a) Each assignee shall assume all obligations of Licensee under this License and shall be jointly and severally liable with Licensee for payment of all Fees and performance of all terms, covenants and conditions to be performed by Licensee hereunder.

(b) A clause naming as additional insureds under all liability and other insurance policies “**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS EMPLOYEES AND REPRESENTATIVES**”.

20.4. Use by Others Prohibited. Except for an assignment permitted in accordance with *Sections 20.1 and 20.2*, Licensee is prohibited from allowing other parties use of the Utility Facility.

20.5. No Further Consent Implied. A consent to one Assignment shall not be construed as a consent to a subsequent assignment. Except as set forth in Section 20.1 above, no interest in this License shall be assignable as to Licensee’s interest by operation of Law without Port’s written consent.

20.6. Fees for Review. Licensee shall reimburse Port for all reasonable and actual costs, including without limitation, reasonable attorneys’ fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment, including any assignment to a Permitted Assignee.

20.7. No Release of Licensee. The acceptance by Port of Fees or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this License or to be a consent to any assignment, or to be a release of Licensee from any obligation under this License. No assignment of this License shall in any way diminish, impair or release any of the liabilities and obligations of Licensee unless expressly agreed by Port.

20.8. Failure to Comply. Any assignment that does not comply with this Section fully may constitute an Event of Default under Section 22.1 and will be void as to Port and this License.

20.9. Acknowledgement. Licensee acknowledges and agrees that each of the rights of Port set forth in Section 20 is a reasonable limitation on Licensee’s right to assign or sublet for purposes of California Civil Code Section 1951.4.

20.10. Waiver of Liability. The Indemnified Parties shall not be liable for any damage to the property of Licensee or its Agents, or for any bodily injury or death to any such Agent, resulting or arising from the condition of the License Area or its use by Licensee or for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, with the exception of damage or injury caused by the gross negligence, willful or intentional misconduct of the Indemnified Parties. Under no circumstances shall any of the Indemnified Parties be liable under any circumstances for any consequential, incidental or punitive damages.

21. INSURANCE.

21.1. Required Insurance. Except as limited in Section 21.1(e), during the Term, Licensee shall maintain in full force and effect, at its own cost and expense at all times while Permitted Activities are being conducted, insurance in the amounts and coverages set forth below.

(a) Workers’ Compensation, U.S. Longshore and Harborworker’s Act Insurance and Jones Act Insurance as required by Law, with Employers’ Liability limits not less than One Million Dollars (\$1,000,000.00) for each accident. In the event Licensee is self-insured for the insurance required pursuant to this Section 21.1(a), it shall furnish to Port a current

Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(b) Comprehensive General Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and Ten Million Dollars (\$10,000,000.00) General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting from any drilling or excavation conducted as part of the Permitted Activities. However, this provision shall not apply to claims relating to investigation or remediation of any environmental conditions on the License Area.

(c) Comprehensive Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

(d) Construction Activities. At all times during any period during which Licensee performs maintenance, repair, removal or relocation of the Utility Facility within the License Area, Licensee shall require its contractors that perform any services on or about the License Area to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. If Licensee has engaged Agents to work on or about the License Area other than Licensee's contractors, Licensee shall cause such Agents to carry insurance that is consistent with industry custom and practice for work of similar nature and scope.

(i) Licensee shall carry "All Risk Property Insurance," which includes coverage during construction, testing, and start-up for any and all materials, equipment and machinery intended for the Project while at the site, off-site and during transit to the site.

(ii) Licensee shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Licensee in connection with Permitted Activities within the License Area for any improvements or any alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Licensee therefor.

21.2. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Licensee hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this

License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

(c) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(d) Licensee shall deliver to Port certificates of insurance in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking system such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Licensee's broker shall complete the insurance questionnaire and submit all required documentation. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) So long as Licensee has not assigned this License (including to an Affiliate), then not more often than every five (5) years and upon not less than sixty (60) days prior written notice, Port may require Licensee to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be reasonably required by Law, the City's Risk Manager or as is generally required by commercial owners of facilities similar in size, character, age and location as the Utility Facility with respect to risks comparable to those associated with the use of the License Area. Port expressly reserves the right to annually require Licensee to increase insurance limits or provide other coverage or coverage amounts upon assignment or transfer of this License.

(f) If at any time during the Term, Licensee or its Agents, as the case may be, fail to maintain the required insurance in full force and effect, all work under this License shall be discontinued immediately, and shall not resume until notice is received by Port that the required insurance has been renewed to full force and effect for a period satisfactory to Port.

(g) **Claims Made Policy.** Should any of the insurance that Licensee is required to hold under this License be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

(h) **Annual Aggregate Limit.** Should any of the insurance that Licensee is required to hold under this License be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

(i) **Waiver of Subrogation Rights.** Notwithstanding anything to the contrary contained herein, Port and Licensee (each a "**Waiving Party**") each hereby waives any right of recovery against the other Party for any loss or damage sustained by such other Party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by insurance which is required to be

purchased by the Waiving Party under this License or is actually covered by insurance obtained by the Waiving Party.

22. DEFAULT; REMEDIES; EMERGENCY CONDITION.

22.1. Default. The occurrence of either of the following constitutes an “**Event of Default**”: Licensee fails to cure any violation of a term, covenant, or condition of this License within thirty (30) calendar days after written notice of violation from Port, or if it reasonably would require more than thirty (30) calendar days to remedy such default, then within a time reasonably necessary to remedy such default so long as Licensee has commenced actions to cure such default within the thirty (30) calendar day period and diligently pursues its efforts to cure to completion. Any such notice of violation shall specify the nature of the default. If the default has been remedied to the reasonable satisfaction of Port during this time, Port shall not terminate this License based upon such default. For purposes of this provision, written notice of violation shall be deemed sufficiently given if sent to the applicable Party at address set forth in **Section 24**. Nothing in this Section shall be interpreted to limit Port’s rights under **Section 23**.

22.2. Remedies. Upon an Event of Default by Licensee and following the applicable cure period set forth in Section 22.1 above, Port may, in its sole discretion, in addition to any other remedy Port may have at law or in equity, elect to terminate this License and Licensee’s right to use the License Area. Upon any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and surrender the License Area in accordance with Section 13 (Surrender/Equipment Removal Plan) above and Port may take any and all action to enforce Licensee’s obligations.

22.3. Emergency Condition.

(a) In the Event of an Emergency Condition, Licensee must take all necessary immediate actions to the extent practicable to address the Emergency Condition, and then provide such notice to Port in accordance with Section 16.4.

(b) In the event Port notifies Licensee of an Emergency Condition, Licensee must immediately take all reasonably practicable actions to address the Emergency Condition, including but not limited actions to confine or limit the extent or impact of the Emergency Condition, and must notify the Port of the status of the Emergency Condition and all reasonably practicable actions to address it within twenty-four hours of Port’s notice.

(c) An “**Emergency Condition**” means an event or circumstance that in the reasonable opinion of the Port requires immediate action for the protection of the health or safety of any person or the prevention of substantial property damage.

(d) Failure to comply with this Section 22.3 shall constitute an Event of Default under Section 22.1 of this License. In addition, upon failure to comply with this Section the Port may require Licensee to suspend operation of the Utility Facility and/or cease Licensee’s activities on the License Area until such Emergency Condition has been remedied to the reasonable satisfaction of Port.

23. PORT’S ENTRY ON LICENSE AREA.

Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; and, except as provided in Section 10(b) of this License, to perform any necessary maintenance, repairs or restoration to the License Area. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Port shall comply with Licensee’s reasonable standards when working near the Utility Facility. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee’s rights under this License.

Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages that result from inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area for the purposes described in this Section (except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees), or entry by the public onto the License Area.

24. NOTICES.

Any notice given under this License shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

Licensee: Mission Rock Utilities, Inc.
305 St. Peter Street
St. Paul, MN 55102
Attn:
Telephone:

**With a copy
to:** Mission Rock Utilities, Inc.
305 St. Peter Street
St. Paul, MN 55102
Attn: General Counsel
Telephone:

Port: Port of San Francisco
Pier 1
San Francisco, California 94111
Attention: Director of Real Estate and Development

Telephone: (415) 274-0400

***With a copy
to:*** Port of San Francisco
Pier 1
San Francisco, California 94111
Attention: General Counsel

Telephone: (415) 274-0400

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this License shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

25. RECORDATION.

Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

26. EXCLUSIVE BENEFIT.

The provisions of this License are for the exclusive benefit of Licensee, City and Port and its successors and assigns and Licensee and shall not be deemed to be for the benefit of or confer rights upon any other person except as provided herein. Nothing herein shall be deemed a dedication of any portion of the License Area to or for the benefit of the general public.

27. SIGNS.

Except for any signs that may be required by Laws relating to the operation of the Utility Facility, Licensee shall not have the right to place, construct or maintain any sign, advertisement, awning, banner or other exterior decoration in the License Area without Port's prior written consent which consent may be granted or withheld in Port's sole discretion. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, and Licensee shall obtain all Regulatory Approvals required by Laws.

28. HOLDING OVER.

Any holding over after the expiration of the Term with the prior written consent of Port shall not constitute a renewal hereof, but shall be deemed a month-to-month license and shall be upon each and every one of the terms, conditions and covenants of this License, except that Port and Licensee shall meet and confer as to any monthly License Fee. Either Party may cancel said month-to-month license upon thirty (30) days written notice to the other Party.

29. MISCELLANEOUS.

This License may be amended or modified only by a written amendment signed by each of the Parties hereto. No waiver by a Party of any of the provisions of this License shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. This License may be executed in one or more originals or counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. Time is of the essence as to each and every provision of this License. This License shall be construed and interpreted in accordance with the laws of the State of California and the City's Charter. This License contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License. This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

30. WAIVER OF CLAIMS.

Licensee hereby waives on behalf of itself and its heirs, successors, and assigns, any and all rights which it may have to file a claim or bring an action of any kind or character against the City, Port, or their respective officers, agents, or employees, for damage to property or personal injury, including death, which might arise out of the use of the License Area under this License,

except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees.

31. ATTORNEYS' FEES.

If any Party hereto brings an action or proceeding (including any cross complaint or counterclaim) against any other Party by reason of a default, or otherwise arising out of this License, the Prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this section shall include, without limitation, a Party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other Party of its claim or defense. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this License, reasonable fees of attorneys of Licensees' in-house legal department and the City Attorney's Office shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by Licensee's in-house legal department or the City Attorney's Office, respectively.

32. AUTHORITY.

If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of such Licensee does hereby covenant and warrant that such Licensee is a duly authorized and existing entity, that such Licensee has and is qualified to do business in California, that such Licensee has full right and authority to execute this License and that each and all of the persons signing on behalf of such Licensee is authorized to do so. Upon Port's request, a Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

33. MINERAL RESERVATION.

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Rent or otherwise relieve Licensee from any of its obligations under this License.

34. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this Section 34 relating to any applicable code provision shall be deemed an Event of Default under Section 22.1 of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

34.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a

person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code) and shall require all Sublicensees and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively “**Core Benefits**”) as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

(d) **CMD Form.** On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) **Penalties.** Licensee understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

34.2. Requiring Health Benefits for Covered Employees. Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 121.3(d) of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a “**small business**” by the City pursuant to Section 121.3 of the HCAO, it shall have no obligation to comply with Section 34.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Licensee shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Licensee based on the Sublicensee’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor’s or Subcontractor’s contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

34.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply, to the extent applicable to

Licensee, with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this License.

34.4. *Local Business Enterprises.* The Port Commission encourages the participation of local business enterprises (LBEs) in Licensee's operations. Licensee agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

34.5. *Indoor Air Quality.* Licensee agrees if applicable to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

34.6. *Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.* Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

34.7. *Prohibition of Alcoholic Beverages Advertising.* Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

34.8. *[Reserved.]*

34.9. *Restrictions on the Use of Pesticides.* Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among

other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

34.10. *MacBride Principles Northern Ireland.* Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

34.11. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

34.12. *Preservative-Treated Wood Containing Arsenic.* Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

34.13. *Notification of Limitations on Contributions.* If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.13 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee

acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee's bid or contract. Additionally, Licensee certifies that if this Section 21.13 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

34.14. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

34.15. *Conflicts of Interest.* Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

34.16. *Drug-Free Workplace.* Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

34.17. *Prevailing Wages and Working Conditions.* Licensee shall comply to the extent applicable to Licensee with all prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of

enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee's failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Licensee shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

34.18. *Consideration of Criminal History in Hiring and Employment Decisions.*

(a) Licensee agrees to comply with and be bound by all applicable provisions of Labor and Employment Code Division II, Article 142 (formerly San Francisco Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; "**Article 142**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee shall incorporate by reference the provisions of Article 142 in all sublicenses of some or all of the License Area, and shall require all sublicensees to comply with such provisions. Licensee's failure to comply with the obligations in this subsection shall constitute an Event of Default under Section 22.1(b) of this License.

(c) Licensee and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

(f) Licensee and sublicensees shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The

notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 142.8.

34.19. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”). Licensee’s improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee’s improvements or alterations, Licensee shall contact City’s Office of Economic Workforce and Development (“OEWD”) to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee’s failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

34.20. San Francisco Bottled Water Ordinance. Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

34.21. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Licensee shall not install or permit any vending machine on the License Area without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall constitute an Event of Default under Section 22.1(b) of this License. Without limiting Port’s other rights and remedies under this License, Port shall have the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating

establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

34.22. *Licensee's Compliance with City Business and Tax Regulations Code.* Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 34.22 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

34.23. *Consideration of Salary History.* Licensee shall comply if applicable with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K) (Consideration of Salary History Ordinance or "Pay Parity Act"). For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

35. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS.

No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License.

36. DOCUMENTS AND INFORMATION SHARING.

Licensee shall provide to Port and, upon request, to any other City department without charge, copies of all publicly-available documents required to be submitted to Regulatory Agencies in connection with the Utility Facility, including, copies of any studies, applications, reports, documents, memorandums, permit applications, permits, licenses, plans, drawings, applications of rate approvals, or other agreements (collectively, "**Studies**"). Studies may be provided electronically in the format in which they were received by Licensee or in PDF format. Upon request, which shall identify the document(s) or categories of document(s) subject to the request, Licensee shall also provide the requesting City Department with supporting documentation for any Studies that Licensee is not contractually prohibited from sharing with a third party relating to the Project, including but not limited to, any Studies relating to the San Francisco transmission grid and its substations and any Studies (including but not limited to, Studies regarding marine resources, Hazardous Materials, geotechnical conditions, and navigation/shipping channel locations) related to alternative routing of submarine cables. In addition, Licensee shall, without charge, meet with Port or other City agencies as designated by Port as reasonably required to assist Port or City agencies in reviewing the Studies, determining their potential applicability to other City or Port projects, and assessing the feasibility of, or, under commercially reasonable prices and terms, assisting in or undertaking the construction of projects to the extent authorized by the Board of Supervisors. Such meetings shall take place at Port's office or another location within the City, as designated by Port or another City agency. Licensee shall maintain current, accurate and complete plans and record drawings showing, in

detail, the exact location, depth, and size of the Utility Facility constructed or installed in the License Area. Upon demand from City, such plans and record drawings shall be delivered to City in a form to be determined by City pursuant to the following timeframes: (a) immediately in the event of an emergency; (b) within five business days for requests of ten or fewer records; or (c) within ten business days for requests of more than ten records.

For purposes of this Section, "Licensee" shall mean MRU, an Affiliate of MRU or any successor or assign.

37. ESTOPPEL CERTIFICATES.

Licensee shall execute and deliver the certificate form attached to this Lease as *Exhibit B* within ten (10) business days of receipt by Licensee of a written request by Port.

38. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this License, Licensee acknowledges and agrees that no officer or employee of City has authority to commit City to this License unless and until City's Board of Supervisors shall have duly adopted a Resolution approving this License and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a Resolution, and this License shall be null and void if City's Mayor and the Board of supervisors do not approve this License, in their respective sole discretion. Approval of this License by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted, nor will any such approval create any binding obligations on City.

39. MISCELLANEOUS PROVISIONS.

39.1. California Law; Venue. This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

39.2. Entire Agreement. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this License.

39.3. Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

39.4. Severability. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

39.5. Interpretation of License.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either Party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

(g) The Party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

39.6. Successors. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

39.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to

Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

39.8. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

39.9. Electronic Signature. This License may be executed by electronic signatures and transmitted in a pdf version by email and such electronic signatures shall be deemed as original for purposes of this License and shall have the same force and effect as a manually executed original.

39.10. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

39.11. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

39.12. Time is of Essence. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

39.13. Cumulative Remedies. All rights and remedies of either Party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

39.14. Survival of Indemnities. Termination or expiration of this License shall not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

39.15. Relationship of the Parties. Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither Party shall act as the agent of the other Party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

39.16. No Recording. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

39.17. Additional Written Agreement Required. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit,

concession, abatement, or any other form of monetary consideration (individually and collectively, “Concession”) without a written agreement executed by the Executive Director of Port or their designee authorizing such Concession and, if applicable, certification of the Concession from the City’s Controller.

40. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

“**ADA**” means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

“**Affiliate of MRU**” shall mean (A) an entity that controls, is controlled by or is under common control with, MRU, or (B) an entity that acquires all or substantially all of the business and assets of MRU or a division thereof or results from a merger with MRU or such a division. A party shall be deemed to “control” another party for purposes of the aforesaid definition only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party.

“**Agents**” when used with reference to either Party to this License or any other person, means the officers, directors, employees, agents, and contractors of the Party or other person, and their respective heirs, legal representatives, successors, and assigns. References in this License to a Party’s acts or omissions will mean acts or omissions by that Party and its Agents and Invitees unless the context requires or specifically states otherwise.

“**Anniversary Date**” means the first and each subsequent anniversary of the Effective Date.

“**CEQA**” means the California Environmental Quality Act.

“**Claims**” mean claims, judgments, losses, costs, expenses, injuries, settlements, liens, damages, penalties, fines or liabilities.

“**Construction Plans**” means the engineered construction plans for the Utility Facility submitted to the Port for review and approval.

“**days**” mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

“**Effective Date**” is defined in Section 5.

“**Emergency Condition**” is defined in Section 22.1.

“**Environmental Covenants**” means any recorded deed restrictions, as may be in effect from time to time, which impose conditions under which certain land uses will be permitted at designated portions of the License Area.

“**Environmental Laws**” means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife,

human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this License. “**Environmental Laws**” include the City’s Pesticide Ordinance (Chapter 3 of the San Francisco Environment Code), the Soil Management Plan, and Environmental Covenants.

“**Environmental Regulatory Action**” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“**Environmental Regulatory Agency**” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“**Environmental Regulatory Approval**” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

“**Equipment Removal Plan**” is described in Section 13.

“**Event of Default**” is defined in Section 22.1.

“**Exacerbate**” or “**Exacerbating**” “Exacerbate” or “Exacerbating” when used with respect to Hazardous Materials means any act or omission, including the disturbance, removal or generation of Hazardous Materials in the course of the Permitted Activities, that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission of Licensee or its Agents, or otherwise requires Investigation or Remediation that would not have been required but for such act or omission. “**Exacerbation**” has a correlating meaning.

“**Expiration Date**” is defined in Section 6.

“**Fees**” means the License Fee, if any, and all other fees, charges and sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 9.

“**Force majeure**” means a delay in Licensee’s performance of its obligations under this License to the extent caused by (a) acts of nature, enemy action, civil commotion, fire, flood, earthquake or other casualty, (b) strikes or other labor disputes (to the extent not resulting from the labor practices of Licensee), (c) material shortages of or inability to obtain labor or materials beyond the reasonable control of Licensee, (d) any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, brought by plaintiffs unaffiliated with Licensee that challenges the validity of: (A) any action taken by a Regulatory Agency in connection with the obligation to be performed, or (B) the failure of a Regulatory Agency to impose conditions to a Regulatory Approval for the obligation to be performed or (C) the validity of any other Regulatory Approval required in connection with the obligation to be performed, and (e) delays by Regulatory Agencies in issuing requisite approvals or consents beyond the reasonable control of Licensee so long as Licensee is diligently proceeding to obtain the necessary Regulatory Approvals. Delays beyond Licensee’s reasonable control exclude delays to the extent caused by the negligent act or omission or willful misconduct of Licensee.

“Handle” or “Handling” when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material.

“Hazardous Material” means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a “hazardous constituent”, “hazardous substance”, “hazardous waste constituent”, “infectious waste”, “medical waste”, “biohazardous waste”, “extremely hazardous waste”, “pollutant”, “toxic pollutant”, or “contaminant”, or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. “Hazardous Materials” also includes any chemical identified in the Soil Management Plan.

“Hazardous Materials Claim” means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys’ Fees and Costs and fees and costs of consultants and experts.

“Hazardous Material Condition” means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, over or under the License Area emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term.

“Horizontal DDA” is defined in Recital A.

“Horizontal Developer” is defined in Recital A.

“HRC” means the San Francisco Human Rights Commission.

“Indemnified Parties” means Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents.

“Indemnify” means to indemnify, protect, defend, and hold harmless forever.

“Indemnification” and **“Indemnity”** have correlating meanings.

“Interest Rate” means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

“Investigate” or “Investigation” when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that may be located, have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property, or the environment, or events affecting receptors or the environmental condition in, on, over, or under, the License Area. Investigation will include, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after

Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

“Invitees” means Licensee’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires and any other person whose rights arise through them.

“Late Charge” means a fee of ten percent (10%) of the amount outstanding.

“Law” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan) and any amendments, and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area including Regulatory Approvals issued to Port which require Licensee’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the Parties.

“License Area” is defined in Section 1.1.

“Maintenance Plan” means the written document prepared by Licensee and approved by Port, that contains a detailed description of the means and methods to maintain the Utility Facility within the License Area. The Maintenance Plan shall identify the daily, weekly, monthly, and annual routine maintenance, repair and replacement tasks, as applicable, including any tasks associated with the repair or replacement of LCC and any specialized equipment (in the event that the Utility Facility incorporates such specialized equipment) necessary for continued operation of the Utility Facility. For each category of the Permitted Activities (i.e., for each Utility Facility), Licensee shall provide cost estimates for performance of any maintenance described in the Maintenance Plan. Maintenance estimates will correspond with the maintenance intervals described in the Maintenance Plan (e.g., monthly or annually as applicable).

“Master Lease” is defined in Recital A.

“Operations Manual” means the document or manual drafted by Licensee and approved by Port describing how to operate any specialized equipment necessary for continued operation of the Utility Facility along with manufacturer’s instructions for operation and maintenance and other pertinent information about the equipment. The Operation Manual is for the Port’s file purposes and not attached to this License. The Port Engineer, in their discretion, may allow the Licensee to defer submission of the Operations Manual until completion of the Utility Facility in accordance with the Construction Plans.

“Other Utilities” is defined in Section 1.2.

“Permitted Activities” is defined in 4.1.

“Prevailing Party” is defined in Section 31.

“Prohibited Use” is defined in Section 4.3.

“Project Site” is defined in Recital A.

“Regulatory Agency” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, potentially including the Federal Energy Regulatory Commission (“FERC”), the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port’s Chief Harbor Engineer, the United States Department of Labor, now or later having jurisdiction over Port property, Licensee, and the Project.

“Regulatory Approval” means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

“Release” when used with respect to Hazardous Materials means any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, releasing or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

“Remediate” or **“Remediation”** when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, over, or under the License Area or which have been, are being, or threaten to be Released into the environment from the License Area or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“Serviced Building” means the buildings and improvements located on Assessor Parcel Number 8719-B002, more commonly known as The Canyon; Assessor Parcel Number 8719-C003, more commonly known as Building B; Assessor Parcel Number 8719-C001, more commonly known as Verde; and Assessor Parcel Number 8719-A008, more commonly known as Building G within the Project Site, which buildings receive services from the Utility Facility.

“Soil Management Plan” means that certain Soil Management Plan dated as of October 18, 2019 and prepared by Ramboll US Corporation for the Project Site, approved by Port, DPH, and DTSC, a copy of which is attached as ***Exhibit C*** hereto.

“Studies” is defined in Section 36.

“Surface Level Improvements” means the limited surface level improvements comprised of manholes, handholes and meter boxes depicted on ***Exhibit A-2*** hereto.

“SWPPP” is defined in Section 16.5(a).

“Term” is defined in Section 6.

“Utility Facility” is defined in the Basic License Information.

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IN WITNESS WHEREOF, the undersigned have executed this License as of dates indicated below.

San Francisco Port Commission: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Elaine Forbes
Executive Director

Date Executed: _____

Licensee: **MISSION ROCK UTILITIES INC.**
a Delaware corporation

By: _____
Name: _____
Title: _____

Date Executed: _____

By: _____
Name: _____
Title: _____

Date Executed: _____

APPROVED AS TO FORM:
DAVID CHIU
CITY ATTORNEY

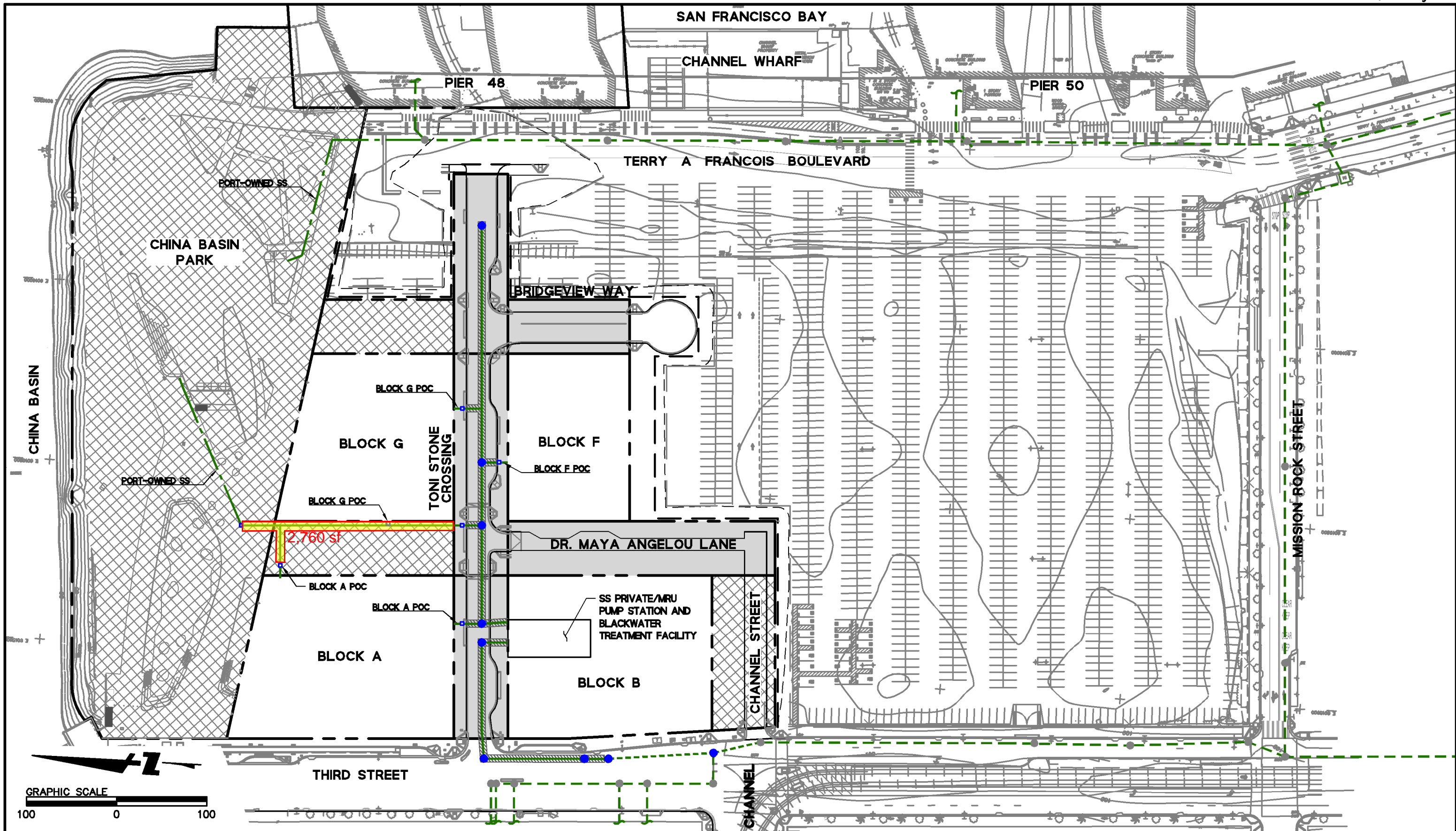
By: _____
Nancy Taylor
Deputy City Attorney













Drafted By: _____
Caroline Morris

(initial)

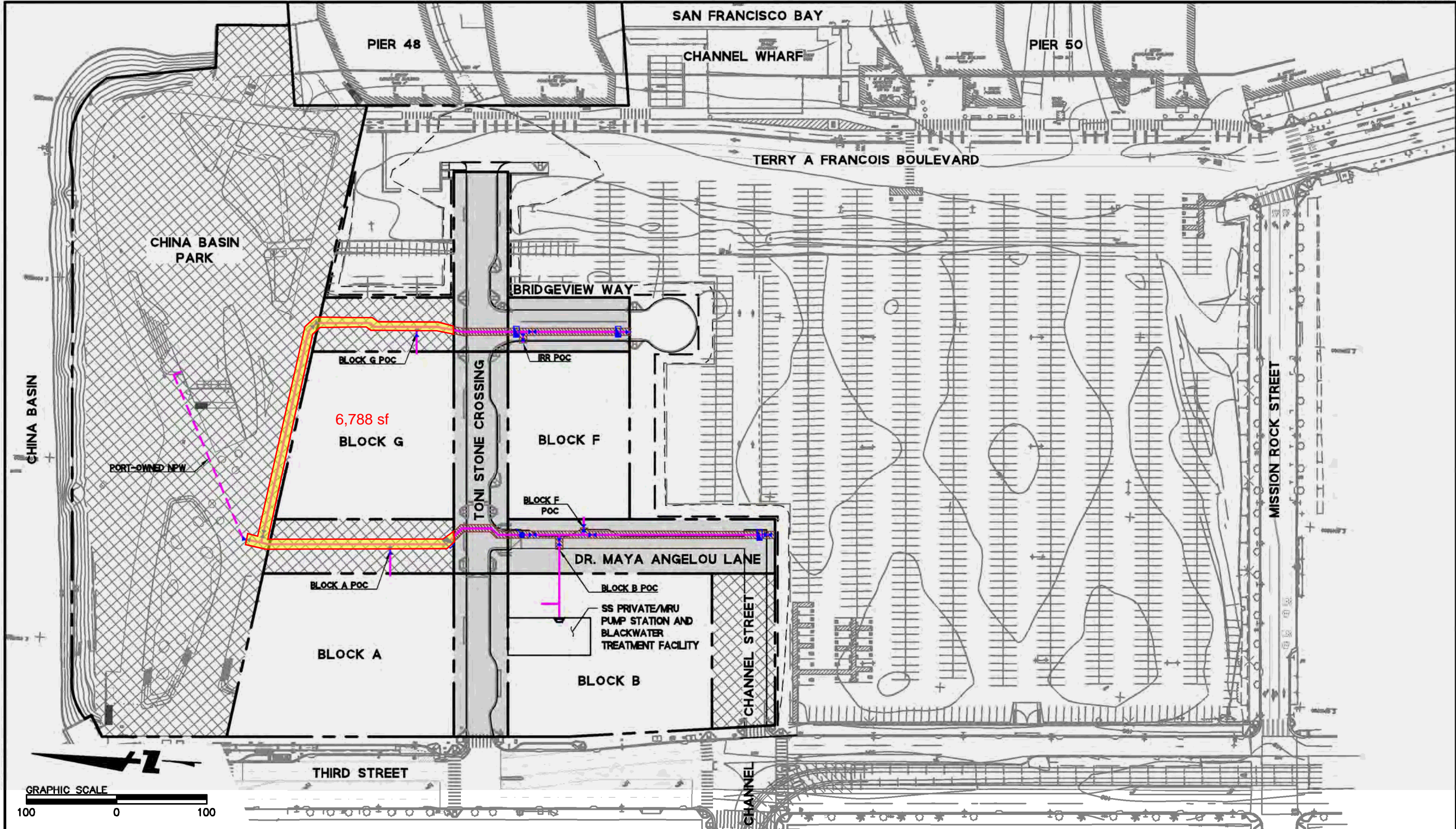
EXHIBIT A
LICENSE AREA

DRAWING NAME: \\BKF-01\vol1\4\2008\080006 Mission Rock\ENG\Exhibits\22_0330 MRU Encroachment Permit\CAD\PHASE 1\Figure 1 Sanitary Sewer System Ownership_P1.dwg
PLOT DATE: 08-24-22 PLOTTED BY: arf



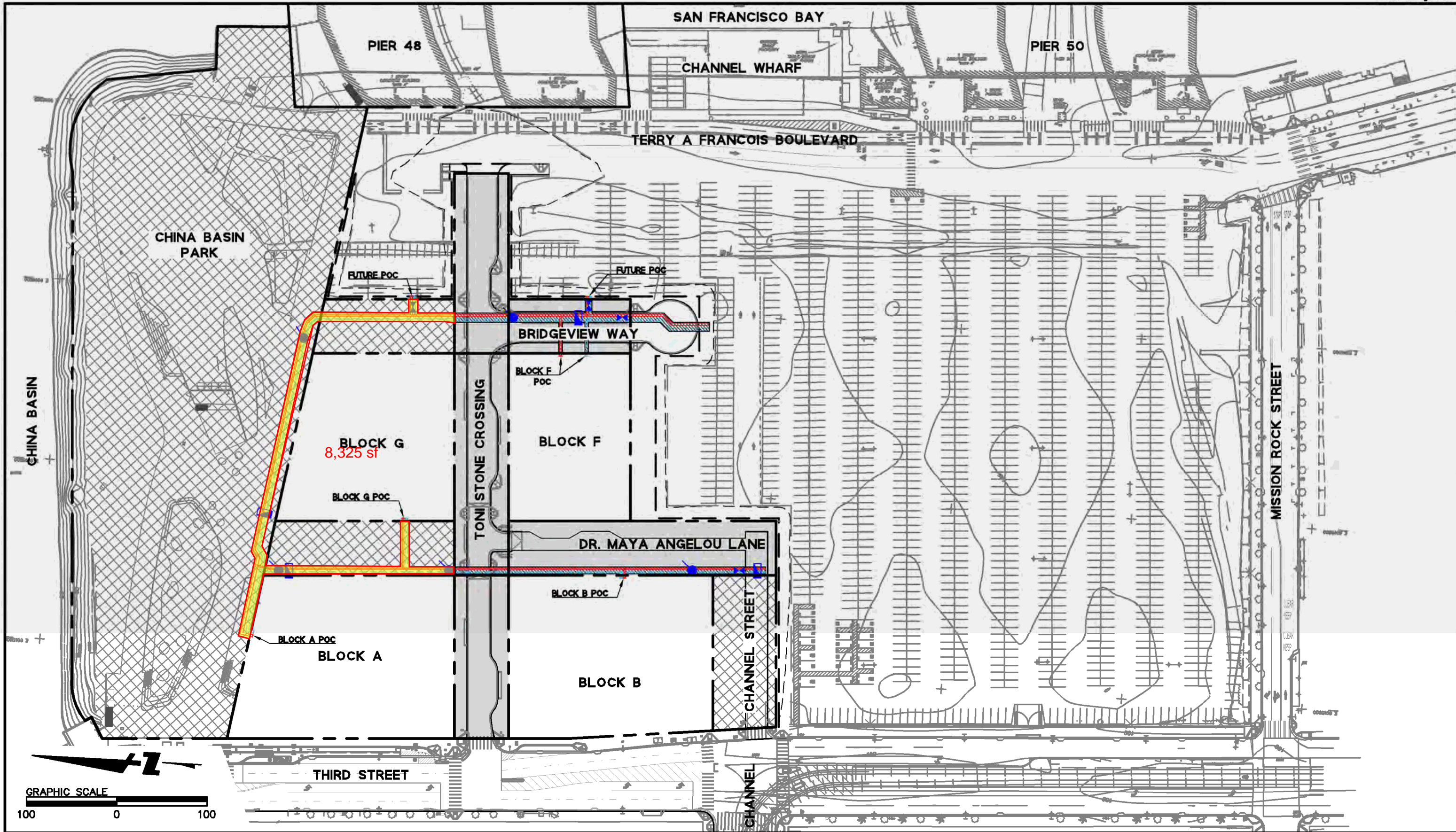
LEGEND		DATE: 08/22/2022 SCALE: 1"=100' DESIGN: JW DRAWN BY: JM/SH APPROVED: JD JOB NO: 20080006		 MISSION ROCK PARTNERS 24 WILLIE MAYS PLAZA SAN FRANCISCO, CA 94107 415/468-6676 415/468-6678 (FAX) BKF ENGINEERS 150 CALIFORNIA STREET, STE 600 SAN FRANCISCO, CA 94111 415/930-7900 415/930-7948 (FAX)	MISSION ROCK REDEVELOPMENT PORT LICENSE AREA FOR MRU SANITARY SEWER SYSTEM
--- PARCEL BOUNDARY	 LICENSE AREA (SF PORT)	 EXISTING SS	 EX SSMH		
 PARKS AND OPEN SPACE	 PRIVATE SS	 PORT-OWNED SS	 PR SSMH		
 PUBLIC ROW	 SFPUC-OWNED SS	 PERMIT AREA (SFPW ROW)	 PR SSC0		

DRAWING NAME: \\BKF-01\vol\4\2008\080006 Mission Rock\ENG\Exhibits\22_0330 MRU Encroachment Permit\CAD\PHASE 1\Figure 2 Proposed Non-Potable Water System_P1.dwg
PLOT DATE: 08-22-22
PLOT BY: err



LEGEND - - - - - PARCEL BOUNDARY PARKS AND OPEN SPACE PUBLIC ROW	PRIVATE NPW PORT-OWNED NPW PERMIT AREA (SFPW ROW) GATE VALVE AIR RELEASE VALVE BLOW OFF VALVE	DATE: 08/22/2022 SCALE: 1"=100' DESIGN: JW DRAWN BY: JM/SH APPROVED: JD JOB NO: 20080006	 MISSION ROCK PARTNERS 24 WILLIE MAYS PLAZA SAN FRANCISCO, CA 94107 415/488-6676 415/488-6678 (FAX) BKF ENGINEERS 150 CALIFORNIA STREET, STE 600 SAN FRANCISCO, CA 94111 415/930-7900 415/930-7948 (FAX)	MISSION ROCK REDEVELOPMENT PORT LICENSE AREA FOR MRU NON-POTABLE WATER SYSTEM
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DRAWING NAME: \\BKF-01\vol1\4\2008\080006_Mission Rock\ENG\Exhibits\22_0330 MRU Encroachment Permit\CAD\PHASE 1\Figure 3 District Energy System Ownership_P1.dwg
PLOT DATE: 08-22-22
PLOT BY: arf



- LEGEND**
- — — — — PARCEL BOUNDARY
 - ▨ PARKS AND OPEN SPACE
 - ▬ PUBLIC ROW

- PRIVATE HHW DES
- - - PRIVATE CHW DES
- ▨ PERMIT AREA (SFPW ROW)
- ⊗ GATE VALVE
- ⊙ AIR RELEASE VALVE
- ⊙ BLOW OFF VALVE

DATE: 08/22/2022
SCALE: 1"=100'
DESIGN: JW
DRAWN BY: JM/SH
APPROVED: JD
JOB NO: 20080006



MISSION ROCK PARTNERS
24 WILLIE MAYS PLAZA
SAN FRANCISCO, CA 94107
415/488-6676
415/488-6678 (FAX)
BKF ENGINEERS
150 CALIFORNIA STREET, STE 600
SAN FRANCISCO, CA 94111
415/930-7900
415/930-7948 (FAX)

MISSION ROCK REDEVELOPMENT

PORT LICENSE AREA FOR MRU

DISTRICT ENERGY SYSTEM

EXHIBIT B
ESTOPPEL CERTIFICATE

The undersigned, _____, is the licensee of a portion of the real property commonly known as [Insert License Area Address/Location] located in San Francisco, California (the "Property"), and hereby certifies to THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port") [and to _____ ("Other Party")] the following:

1. That there is presently in full force and effect a license (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "License") dated as of _____, 20__, between the undersigned and Port, covering approximately ____ square feet of the Property (the "License Area").
2. That the License has not been modified, assigned, supplemented or amended except by:
3. That the License represents the entire agreement between Port and the undersigned with respect to the License Area.
4. That the commencement date under the License was _____, 20__, the expiration date of said License is _____, 20__.
5. That the present minimum monthly license fee which the undersigned is paying under the License is \$_____.
6. The security deposit held by Port under the terms of the License is \$_____ and Port holds no other deposit from Licensee for security or otherwise.
7. That the undersigned acknowledges that Port has no obligation to make any improvements to the License Area.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the License or otherwise against the fees or other charges due or to become due pursuant to the terms of the License.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the License, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the License by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the License, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the License by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, Other Party and [its/their respective] successors and assigns.

Dated: _____, 20__.

[Name of Licensee]

By:

Name:

Title:

EXHIBIT C
SOIL MANAGEMENT PLAN

Prepared by

**Ramboll US Corporation
Emeryville, California
Irvine, California**

Submitted to:

**California Environmental Protection Agency
Department of Toxic Substances Control
Berkeley, California**

**San Francisco Department of Public Health
San Francisco, California**

Project Number

1690001737

Date

October 18, 2019

SOIL MANAGEMENT PLAN
MISSION ROCK DEVELOPMENT
SAN FRANCISCO, CALIFORNIA

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1. INTRODUCTION

On behalf of Mission Rock Development Partners (Mission Rock), Ramboll US Corporation (Ramboll) has prepared this Soil Management Plan (SMP) related to redevelopment activities within the approximately 21 acre Mission Rock Development Project Area (Development Area or Site), including the former H&H Ship Service Company facility (Former H&H Facility) that was located at 220 Terry Francois/China Basin Street, San Francisco, California, in the northeast portion of the Site (see Figures 1 and 2). All portions of the Development Area are owned by the City and County of San Francisco ("Owner") and are subject to a Master Lease and Disposition and Development Agreement between the Port of San Francisco and the Master Developer, Seawall Lot 337, Associates. The site will be subdivided to create development parcels, which will be leased by vertical developers for development. As discussed in further detail below, this SMP is intended to concurrently serve as a Site Mitigation Plan for the Development Area, as required by the City of San Francisco, and as an SMP required by the California Department of Toxic Substances Control (DTSC) for the Former H&H Facility. This SMP supersedes a previous SMP prepared in 1999 (Geometrix, 1999).

The Development Area is currently comprised of China Basin Park in the north, with the remaining and largest portion consisting of an asphalt-paved parking lot. The approximately 2.4 acre Former H&H Facility is located in the northeast corner of the surrounding Development Area. The property that is the Former H&H Facility is entirely within the asphalt-paved surface parking lot.

The Former H&H Facility has been subject to oversight by the DTSC since 1978, when the DTSC's predecessor agency determined that some of the wastes handled by H&H were "hazardous wastes" under California law. The facility was closed under the DTSC corrective action program in phases, with DTSC approving facility closure in 1999. As part of the approval of the Former H&H Facility remediation, DTSC required the recordation of two DTSC-approved land use covenants (LUCs) for separate portions of the Former H&H Facility. One LUC, recorded in 2000, applies to a 1.8 acre portion of the Former H&H Facility ("2000 LUC Area"), and another LUC recorded in 2002 was recorded for a 0.6 acre area ("2002 LUC Area") within the facility. Both LUCs outline certain land use restrictions and prohibit direct contact with "native" soils (i.e. historical fill material currently in place). To implement these requirements, both LUCs require a DTSC-approved SMP for the areas subject to the LUCs.

In light of the land uses projected for the Development Area (described in Section 1.7 below) and based on an updated Human Health Risk Assessment for those land uses, the Owner recently proposed revisions to the LUC recorded in 2000. DTSC approved those revisions on September 16, 2019, and an amended LUC for the 1.6 acre portion of the Former H&H Facility (the "2019 Amended LUC") was recorded on September 24, 2019. The 2019 Amended LUC superseded the 2000 LUC, and continues to require an SMP for the area subject to the LUC.

In addition to DTSC oversight of the Former H&H Facility, the entire Development Area is subject to the requirements of Article 22A of the San Francisco Health Code (Maher Ordinance), which was adopted in 1986 by the San Francisco Board of Supervisors in response to public concern regarding hazardous materials exposure to fill material that was

placed in areas along the historical shoreline areas of San Francisco due to the placement of fill material after the 1906 earthquake and fire. The fill typically contains elevated concentrations of contaminants such as petroleum hydrocarbons and heavy metals. The applicability of the ordinance was expanded in 2013 to include areas in San Francisco with current or historical industrial use or zoning, areas within 100 feet of current or historical underground tanks or filled former Bay or creek areas and areas within 150 feet of a current or former elevated highway. For any site covered by the ordinance for which a City of San Francisco or Port of San Francisco building permit is necessary and for which there are plans to disturb at least 50 cubic yards of soil, the ordinance requires SFDPH review of the site history (e.g., a Phase I environmental site assessment), prior sampling data, future construction plans, and other available information. In a letter dated December 22, 2016, SFDPH confirmed that no additional sampling was necessary for Maher Ordinance compliance in relation to the Development Area, and requested the submittal and approval of a Site Mitigation Plan and Dust Control Plan for the project.

Based on the collective procedures and best management practices that will apply across the entire Development Area, this Soil Management Plan satisfies several regulatory requirements:

1. The requirements for a DTSC-approved SMP specified in the 2019 amended LUC and the 2002 LUC for the areas subject to those LUCs (i.e., the 2000 and 2002 LUC Areas, respectively).
2. The requirements for a Site Mitigation Plan for the entire Development Area under the Maher Ordinance.
3. In addition, a small portion of the Site (approximately 0.37 acres along the entirety of the southern Site boundary) was formerly located within the Mission Bay Redevelopment Area of San Francisco. This approximately 20 to 25 foot strip of land was historically known as Mission Bay Block (Parcel) 20. Although the Parcel 20 portion of the Site has been removed from the Mission Bay Redevelopment Area, it currently remains subject to the Mission Bay Risk Management Plan (RMP).¹

This SMP provides protocols and guidance that Site contractors must follow in the event that evidence of soils impacted by petroleum products or other contaminants are encountered during the Site demolition, grading, or other redevelopment activities at the Site. It also incorporates and implements certain requirements specified in the 2019 Amended LUC, including ensuring that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing soil.

The Owner, future and current lessees or sublessees, developers, occupants and managers, as well as contractors delegated or authorized to perform construction and/or property maintenance activities on their behalf ("Contractor"), are required to comply with the measures identified in this SMP when engaging in (or soliciting or directing others to engage

¹ In 2017, the San Francisco Regional Water Quality Control Board transferred authority for implementation of the RMP to SFDPH. See Section 3.10 and Attachment 5 for a summary of RMP-based requirements specific to this portion of the site.

in) the relevant activities discussed below. The LUCs recorded against portions of the Site also require the Owner, lessees, occupants and their agents to comply.

For that reason, as used in this SMP, the term “Responsible Entity” shall mean those persons (whether individuals, corporations, or other legal entities) on whose behalf the activities regulated by this SMP are conducted. For example, the Owner may contract with a third party to perform ground-intrusive activities in the parks or open spaces on the Site. Similarly, the San Francisco Department of Public Works may contract with a third party to install or repair utilities in the public streets within the Site, or a lessee may contract with a construction company or property maintenance company or similar entities to perform certain activities on the Site. In addition, a Master Association comprised of commercial and/or residential tenants at the Site may assume responsibility for maintaining certain buildings, other structures, and landscaped common areas, such that the Association contracts with third parties to conduct ground-intrusive maintenance activities. Each of these entities and their respective general contractors and other contractors performing such work are “Responsible Entities” or “Contractors” obligated to comply with this SMP. A former lessee, licensee, permittee, or other former holder of a property or contract right who, at such time when activities regulated by this SMP are conducted, no longer holds an interest in title to a parcel or no longer has a property or contract interest in a parcel, will not be considered a Responsible Entity for purposes of this SMP.

1.1 Purpose of SMP

The purpose of the SMP is to generally describe the procedures that will be employed when areas of known or potentially impacted soils are encountered during Site redevelopment activities. The SMP has been developed to facilitate the redevelopment of the Site, by outlining procedures that will be used for identifying, testing, handling, and disposal of impacted soil that may be encountered during the redevelopment activities. Implementing the procedures in this SMP will ensure that impacted soil (if encountered, see Section 3) is handled in a manner that is protective of human health and the environment, in accordance with State and local regulations.

The results of various subsurface investigations performed at the Site from 1994 to present are summarized in Section 1.5.

1.2 Site Setting

The Development Area is approximately 21 acres in size and is located adjacent to the Mission Bay neighborhood of San Francisco (Figures 1 and 2). The Development Area is bound by the San Francisco Bay to the north and east, Mission Rock Street to the south, and 3rd Street to the west. The Former H&H Facility was formerly located at 220 Terry A. Francois Boulevard/China Basin Street (as streets and addresses have changed over time, this location is west of Pier 54) in the northeast portion of the Development Area (Figures 1 and 2).

China Basin Park comprises the northern portion of the Development Area. The remainder of the Development Area is comprised of an asphalt-paved parking lot.

1.3 Site Background

Prior to 1906, the Development Area was comprised of shallow tidal flats of San Francisco Bay. In 1906, the Development Area and surrounding properties were created by filling and raising the land surface above the Bay following the 1906 earthquake and fire. After 1906, historical Site uses include railway yards and warehouses, metal fabrication and machine shops, truck repair shops, and shipping services.

1.3.1 Railway Yards and Warehouses

Between approximately 1913 and 1956, the Development Area was occupied by the Atchison, Topeka, and Santa Fe (ATSF) railway yards and associated structures, including storage warehouses on the western portion of the Development Area, a railroad supply depot on the southern portion of the Development Area, and a roundhouse south of the Development Area. Although the ATSF railway yards closed in the 1950s, the storage warehouses remained on Site as late as 1999.

1.3.2 Metal Fabrication and Machine Shops

Metal fabrication and machine shops were located in the northern portion of the Development Area from approximately 1949 to 1993.

1.3.3 Truck Repair Shops

Two truck repair shops operated in the northern portion of the Development Area beginning in 1968.

1.3.4 H&H Ship Services Company

In 1950, H&H began operating a marine and industrial tank cleaning facility at the Site. H&H's operations included cleaning bulk oil cargo and fuel tanks on ships and barges and recycling of waste oil and water. These activities were later found by DTSC's predecessor to be subject to hazardous waste regulation and in 1978, H&H began operating under Resource Conservation and Recovery Act (RCRA) interim status pending approval of its RCRA operating permit and facility upgrades. In 1982, H&H began underground storage tank (UST) cleaning operations, which involved cleaning and dismantling discarded USTs. The Former H&H Facility included the former Tank Transfer Area (TTA), which was located near Pier 48 and San Francisco Bay at the northeast side of the site, and the Tank Cleaning Area (TCA), Container Storage Unit (CSU) area, and Solidification Unit (SU), which were centrally located on Site.

In 1993 H&H ceased operations at the Site, and subsequently implemented closure activities under the DTSC corrective action program including removal of remaining hazardous wastes and equipment, and cleaning of remaining facilities e.g., concrete pads. Sampling was conducted at the Site in 1999 to document clean closure of H&H's hazardous waste management units. DTSC approved the final closure of the Former H&H Facility in 1999 subject to the placement of certain restrictions and requirements contained in land use covenants.

The 2000 LUC covered the former TTA operations. The 2002 LUC covered H&H's wastewater treatment and transfer operations (including the TCA, CSU, and SU) from approximately 1950 through 1996, including the use of aboveground storage tanks (ASTs) for receiving,

settling, and treating wastewater containing petroleum. Sampling at the 2002 LUC Area was conducted as part of closure activities in 1995, and additional samples were collected in 2001.

1.4 Site Geology and Hydrogeology

The Site and overall Development Area are currently relatively flat and at an elevation of approximately five feet above mean sea level (msl).

Approximately 13 to 37 feet of fill material underlays the Development Area, some of which may contain rubble and debris from the 1906 San Francisco earthquake and resulting fire. Beneath the fill is approximately 46 to 72 feet of compressible clay or "Bay Mud," under which is approximately 68 to 74 feet of medium stiff to stiff clay, or "Old Bay Clay." In some areas, dense to very dense sand layers are present beneath the Old Bay Clay. Bedrock is present at approximately 160 to 260 feet below ground surface (bgs).

Groundwater is anticipated to be present beneath the Development Area at depths of approximately seven to nine feet bgs, and due to proximity to San Francisco Bay, is likely to be tidally influenced.

1.5 Land Use Covenants for the Former H&H Facility

Two separate land use covenants (LUCs), or deed restrictions, address the Former H&H Facility within the Development Area:

The Former H&H Facility has been regulated by the DTSC since 1978. The 2000 LUC (which was superseded by the 2019 Amended LUC) did not allow the 1.8 acre 2000 LUC Area to be used for single family homes, hospitals, schools, or day care facilities, or for recreational uses with direct contact with soils.

In approving the 2019 Amended LUC, DTSC relied upon the Ramboll 2019 Updated Human Health Risk Assessment (Updated HHRA) and its recommendations. The Updated HHRA recommended that future building construction on the Site incorporate vapor intrusion mitigation systems (VIMS) to mitigate potential vapor intrusion risks to future occupants unless additional media sampling demonstrates that there is no unacceptable risk to future occupants via the vapor intrusion pathway. In addition, the Updated HHRA further recommended that, as part of the development plans, capping materials such as hardscape, streets, foundations, and imported clean fill will be placed over existing soil to prevent direct contact with the existing soil. Based on the implementation of these additional mitigation measures, the 2019 Amended LUC now allows residential, day care, and outdoor recreational uses provided that residential uses are not on the first floor, that all uses are separated from the existing soil by a capping material, and that no buildings be built without an engineered VIMS approved in advance by the DTSC subject to the further sampling caveat identified above. The Updated HHRA is further detailed in Section 1.5.2, below.

The 2002 LUC Area is currently occupied by China Basin Park and is subject to the 2002 LUC covering 0.6 acres of the northern-most portion of the Development Area, which was formerly occupied by H&H's treatment and transfer area. The 2002 LUC allows use of the subject area as a park, provided that specified conditions on future construction are met. China Basin Park consists of green space with ballpark and water views and the "Junior

Giants Baseball Field.” The area was determined to be acceptable under DTSC and SFDPH standards for development of China Basin Park and no changes to the 2002 LUC are necessary based on current Development Area plans that incorporate the current park.

1.5.1 Phase I and Phase II Environmental Site Assessments (ESAs)

Phase I ESAs were conducted by ERM-West (ERM) and Langan Engineering and Environmental Services, Inc. (Langan) on all or portions of the Development in 1994 and 2018, respectively. The presence of fill material containing low levels of petroleum hydrocarbons, volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and heavy metals was noted as a recognized environmental condition (REC) in Langan’s Phase I.

ERM conducted a Phase II ESA in 1995 and 1996 that included soil sampling. The results of the soil sampling are not available for review.

1.5.2 Updated Risk Assessment (for the 1.8 acre portion of the Former H&H Facility – the 2000 LUC Area)

A baseline risk assessment was conducted in 1999 by Harding Lawson Associates (HLA) based on the results of the soil and groundwater sampling at the H&H TTA and service yard. Geomatrix also conducted sampling across the site and presented a risk evaluation in 1999. The assessments concluded that the calculated non-cancer hazards and cancer risk levels did not pose a threat to any of the human (and in the case of the HLA report, biological) receptors.

In June 2019, Ramboll submitted the Updated HHRA for the Site to the DTSC. The Updated HHRA was based on data from the soil and groundwater sampling conducted by HLA in 1999. The following steps were recommended to be undertaken as part of the redevelopment of the Site, and were incorporated as requirements in the 2019 Amended LUC:

- Except as stated below, future construction of buildings at the Site (i.e., Blocks F, G, K and J) will incorporate VIMS to mitigate the potential risks of vapor intrusion to future Site occupants. VIMS details will be submitted in a subsequent design document for review/approval by DTSC.
- Absent further sampling, the VIMS design described above will be proposed to DTSC and (with DTSC approval) installed at the time of construction. However, if, prior to development, the Owner or Developer conducts additional sampling and DTSC concurs with the findings that the then-current concentrations do not pose an unacceptable risk to future occupants via the vapor intrusion pathway under both the residential and commercial scenarios, then the need for a VIMS beneath one or more future buildings may be reevaluated in consultation with DTSC.
- Future earth-disturbing activities associated with the redevelopment will be performed in accordance with an SMP, which will be submitted to the DTSC for approval prior to implementation. The SMP will include measures to mitigate potential risks to construction workers. The updated LUC will also describe measures to eliminate direct contact exposure to future Site occupants.

1.6 Known Contaminants of Potential Concern (COPCs)

Sampling conducted at the 2000 LUC Area, the 2002 LUC Area, and the remaining portions of the Development Area has identified a variety of chemicals that may be encountered in soil (fill material) that is affected by redevelopment activities, including petroleum hydrocarbons, VOCs, PAHs, and heavy metals such as arsenic and lead. In addition, it is possible that the fill material historically placed at the Site may contain naturally-occurring asbestos depending on the origin of the fill (e.g., native serpentinite bedrock present in some areas of San Francisco).

Groundwater is approximately 7 to 9 feet bgs and dewatering is expected to take place on an as-needed basis during excavation activities. Given the depth of groundwater and the anticipated dewatering activities as well as health and safety and personal protective measures outlined in Section 2, it is not anticipated that construction workers will come into direct contact with groundwater.

1.7 Planned Site Redevelopment

Plans for the Development Area consist of commercial, retail, and residential developments, as well as parks and open space, as shown on Figure 2, with individual buildings designated as Blocks A through K. Development plans specify that all residential uses will be on the second floor and above in the future buildings. No residential use at the ground level is anticipated; blocks designated for residential use will have non-residential ground level uses such as retail/commercial, restaurants, tenant amenity spaces, day care, and storage. The building blocks will be separated by roadways and open space as indicated in Figures 2 and 3. Key characteristics of the development plans include the following:

- Redevelopment is anticipated to include the addition of a minimum of two feet of clean fill in areas of open space and landscaping, with the remainder of the Development Area covered by pavement, sidewalks, hardscape, or building foundations. Street and building floor slab elevations will be raised up to approximately five feet above the existing surface grade to account for anticipated future sea level rise;
- First floor will be limited to commercial use (i.e., residential use will be limited to the second floor and above); and
- Drinking water will be provided by the San Francisco Public Utilities Commission and use of on-site groundwater will be prohibited.

2. WORKER HEALTH AND SAFETY REQUIREMENTS

The Responsible Entity and its Contractor² will be responsible for establishing and maintaining its own appropriate health and safety procedures to minimize worker and public exposure to Site contaminants during construction. These procedures will be documented in a Site-specific Health and Safety Plan (HASP), which will be prepared prior to beginning intrusive Site redevelopment activities.

The components of the Contractor's HASP shall be consistent with all applicable California Occupational Safety and Health Administration (Cal/OSHA) standards and currently available toxicological information. The Contractor and its subcontractors will assure that on-Site construction workers have the appropriate level of health and safety training and use the appropriate level of personal protective equipment, as determined in the HASP based upon the evaluated job hazards and relevant monitoring results. To the extent that any construction activities may constitute "clean-up operations" or "hazardous substance removal work" as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response (HAZWOPER), 8 Cal. Code Reg. § 5192, Contractor will assure that on-Site personnel conducting such activities, who may contact chemicals in soil have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards ("HAZWOPER-trained personnel"). Soil that is visibly stained, discolored, shiny, or oily, or has a noticeable odor, will be handled only by such HAZWOPER-trained personnel until the Environmental Professional(s) (personnel to be determined by the Responsible Entity and/or Contractor; for the purposes of the initial development,) evaluates the situation (see Section 3) to understand whether the soil contains unacceptable concentrations of contaminants.

2.1 Site Specific Health and Safe Plan Components

The required components of the HASP are outlined below. The HASP should be tailored to current Site conditions, current occupational safety and health standards, and task-specific activities then known to the preparer of the HASP.

2.1.1 Key Personnel/Health and Safety Responsibilities

This section of the HASP will identify the Contractor's key personnel by name and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the Site. The Contractor will provide its employees who will potentially contact soil or previously unidentified soil contamination a copy of the HASP and brief its employees as to its contents. The health and safety responsibilities of each individual worker will be described in this section of the HASP.

2.1.2 Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with soil or previously unidentified contamination will be presented in this section of the HASP. The hazards that will be discussed include, at a minimum, chemical, temperature, and explosion hazards, if applicable. As part of the job hazard analysis, the HASP will identify the chemicals likely to be encountered during the

² For the initial major phases of redevelopment, the general contractor is anticipated to be Granite Construction, Inc.

construction activities and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit [PEL]). The procedures to mitigate the hazards identified in the job hazard analysis will also be presented in this section of the HASP. The use of appropriate Personal Protective Equipment (PPE) will likely be the principal mitigation procedure.

2.1.3 Personal Protective Equipment

This section of the HASP will identify the PPE that will be used to protect workers from the identified COPCs present in soil. Personal Protective Equipment will be selected based on the COPCs identified at the work site, and the known route(s) of entry into the human body. The primary exposure routes include direct contact with soil and inhalation of dust.

Although considered unlikely, certain construction activities, such as the installation of deep utility trenches or foundations, could result in workers coming into direct contact with groundwater. This contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavations. In the event that excavations are conducted in areas and groundwater is encountered, the HASP will identify any additional PPE required to minimize direct contact with COPCs in water, including water repellent gloves and boots.

2.1.4 Work Zones and Site Security Measures

This section of the HASP will identify the specific work zones of the construction site and describe the site security measures, such as the placement of barricades, fencing, access control, and access logs. All workers within the work zone, who will have direct contact with soil, will perform the work in compliance with relevant aspects of the HASP. The support zone will be located outside of the work zone, but within the boundaries of the construction site. All end-of-the day cleanup operations, such as cleaning of truck wheels (for vehicles exiting the construction site that could be tracking contaminated soils off Site), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the construction site. The entire construction site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

2.1.5 Decontamination Measures

This section of the HASP will describe the specific procedures that will be used to decontaminate both equipment and personnel that have been performing work in direct contact with soil. Decontamination measures will include cleaning the wheels of all vehicles that have been in contact with soil in the support zone prior to their exiting the Site. Additionally, workers will be required to remove any contaminated PPE and place it in a designated area in the support zone prior to leaving the Site.

2.1.6 General Safe Work Practices

This section of the HASP will discuss the general safe work practices to be followed at the construction site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, precautions near heavy equipment, confined space entry, and any special precautions that may be specific to the construction site and construction worker.

2.1.7 Contingency Plans/Emergency Information

This section of the HASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash stations, first aid kits, and fire extinguishers will be presented, and emergency telephone numbers and contacts will be identified. A map indicating the route to the nearest hospital will also be provided in this section of the HASP.

2.1.8 Medical Surveillance

This section of the HASP will describe medical surveillance that would be required for certain workers. To the extent that any construction activities may constitute “clean-up operations” or “hazardous substance removal work” as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, 8 Cal. Code Reg. § 5192, each construction Contractor will assure that its on-site personnel conducting such activities have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards (“HAZWOPER-trained personnel”).

2.1.9 Construction Safety Measures

These procedures include construction safety measures for excavations and require preparation of activity hazard analyses.

3. SOIL AND GROUNDWATER MANAGEMENT DURING EXCAVATION AND GRADING

To mitigate potential concerns related to contact with soil that may be contaminated during future grading at the Site, soil management procedures are described below.

3.1 Dust Control

At the request of SFDPH, a separate Dust Control Plan (DCP) has been prepared for redevelopment activities at the Site (an original draft of this document included both elements of the SMP and DCP), and is being issued in parallel to this SMP. An Asbestos Dust Mitigation Plan (ADMP) developed in accordance with Bay Area Air Quality Management District (BAAQMD) requirements has also been prepared under separate cover.

Dust control measures will be implemented during construction activities at the Site to minimize the generation of dust. It is particularly important to minimize the exposure of on-Site construction workers to dust and to prevent dust from migrating off Site. Dust generation may be associated with concrete foundation slab and paving removal and processing (including potential concrete grinding for reuse at the Site), excavation and grading activities, truck traffic, ambient wind traversing soil stockpiles, loading of transportation vehicles, and other earthwork.

3.2 Procedures for Soil Inspection and Notifications

During grading and excavation activities, potentially contaminated soil may be identified via observation of any of the following characteristics:

- Presence of free product. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on soil or water.
- Oily or other staining. Oily staining is not consistent in appearance, but often has a black, dark gray, dark brown, or greenish hue. Other unusual staining or soil discoloration (e.g., blue soils) should also be considered potential evidence of contamination.
- Petroleum or Chemical Odor. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered. If odorous soil or debris is encountered, the material may be contaminated and should be evaluated as soon as possible by field screening with a PID and, if warranted based on the field screening results, sampling for laboratory analysis. Areas exhibiting elevated PID readings above health and safety action levels should not be entered until laboratory data is available to evaluate potential health risks.
- Presence of Elevated Metals. Elevated metals in soil may be identified by strong and sometimes bright discoloration. Any chemical or metal odor should be noted regardless of whether a visible sign of elevated metals is encountered.
- Presence of Waste Debris. If debris such as concrete, scrap metal, bricks or other garbage is identified, the debris and surrounding soil may be contaminated.

- Presence of serpentine-containing fill materials or base rock. If dark gray or greenish serpentine rock (potentially having white fibrous inclusions) is identified, the fill material may potentially contain naturally-occurring asbestos (NOA).

Evaluation of whether soil is potentially contaminated should include input from the Environmental Professional(s) (for the initial redevelopment phase, these personnel are listed in Attachment 1).

Upon identification and confirmation that soil is potentially contaminated, the following actions should immediately be taken:

1. Stop work in the area of impact.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. Complete the Field Reporting Form (Attachment 2) (see Section 3.2.1 for further information relating to documentation).
4. Contain the impacted material, as instructed (see Section 3.2.2 for additional information relating to containment of potentially impacted material).
5. Work should not resume within the area of potential impact until clearance is received from the Environmental Professional.

A copy of this SMP will be kept in project construction trailers (or office, as appropriate) for reference and use in the event that potentially contaminated soil is encountered.

3.2.1 Documentation

In the event potentially contaminated soil and material are encountered during construction activities, information regarding the characteristics, location, and extent of the soil and material impacts must be collected. This information should be documented as follows:

- The approximate location (marked on a site map).
- Extent of potential contamination (How large an area of impacts has been identified?).
- What indications of potential impacts were observed (Odor? Discoloration? Free product? Waste material?).
- Is groundwater or a surface water body (surface puddles not included) impacted (sheen or product on water surface?).
- If possible, take photographs.

3.2.2 Containment

If instructed to do so, the reporting individual should work with the Contractor to contain the potentially-impacted soil and material. The Environmental Professional(s) will evaluate whether potentially-impacted soil and material should be contained based on information provided. The purpose of containment is to ensure that potentially impacted soil does not spread to other portions of the Site or mobilize off Site in the event of rain.

Generally, containment will include one or more of the following steps:

- Relocation of impacted soils to a constructed containment cell created using an earthen berm lined with plastic sheeting. Soils placed within containment cells are subsequently covered with plastic sheeting that extends outside the cell and is sufficiently anchored to minimize exposure to wind and rain.
- Covering impacted soil and material with plastic sheeting and marking the area "Do Not Disturb."
- Placement of silt fencing around the area of potential impacts.
- In the event that free product is observed, applying oil dry or sorbent cloths to soak up oily material.

3.2.3 Site Investigation and Disposal of Impacted Soil

If necessary and as requested by the Responsible Entity, the Contractor, SFDPH, or DTSC, the Environmental Professional(s) will mobilize to the Site to further investigate the nature and extent of the potential contamination. Further investigation including sampling of the soil and/or excavation may be warranted depending on Site conditions.

If necessary, impacted soil will be transported off Site for appropriate disposal per Section 3.7.

3.2.4 Waste Segregation Operations

If soil is determined following laboratory analysis to contain COPCs and off-Site removal of the soil is required, such soil will be segregated and stockpiled in separate containment areas to prevent mixing with non-impacted soil. Soil stockpiles shall be documented (e.g., labeled, identified on a figure or map along with approximate volume estimates) by the Contractor and/or Responsible Entity. Any waste that is determined to be hazardous shall be managed, transported and disposed in accordance with applicable hazardous waste requirements under RCRA (e.g., 90-day limit on site). Information regarding transportation and disposal is presented in Section 3.7.

3.2.5 Decontamination Procedures

If soil containing COPCs is identified by the Contractor during excavation/grading activities, the Environmental Professional(s) will develop and oversee appropriate decontamination procedures for the field personnel and equipment that have come into contact with soil containing COPCs. Specific procedures may vary depending on the type of contamination that is identified.

3.3 Procedures for Groundwater Inspection and Reporting

Based on anticipated depth to groundwater and implementation of localized construction dewatering, it is not expected that grading and excavation work up to five and six feet bgs will encounter groundwater. It is expected that localized dewatering will take place for excavations that are deep enough to encounter groundwater (e.g., future roadways). Construction dewatering via temporary wells will be discharged to the sanitary sewer (with the approval of the San Francisco PUC) or to San Francisco Bay (with the approval of the San Francisco Bay Regional Water Quality Control Board [SFRWQCB] under a National Pollutant Discharge Elimination System [NPDES] permit). Under either discharge scenario, groundwater sample(s) will be collected and analyzed in order to obtain discharge approval. Discharge requirements are project specific and are not specified by this document.

If encountered during excavation, to identify if groundwater is impacted by contaminants, the Responsible Entity, Contractor and/or Environmental Professional will first evaluate whether the soil in the immediate proximity is impacted (see Section 3.2), via field observations such as the following:

- *Presence of Free Product*. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on top of water.
- *Presence of Chemical Odor*. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered.

Such groundwater will be initially segregated by pumping into appropriate containers for permitted discharge or off-site transport for disposal (Section 3.7). Upon characterization, disposal may be via discharge to the on-site dewatering treatment system (if acceptable), or transported off site. The procedures for notification and reporting of impacted groundwater are the same as those prescribed for soil, as detailed in Section 3.2.

Discharge of water generated during large-scale construction activities to surface waters will be performed under a state-specific NPDES permit or under the requirements of the local permitting authority (e.g., municipal wastewater agency). Prior to any large site redevelopment (i.e. greater than one acre), a SWPPP must be developed. The SWPPP must comply with the requirements of the applicable state and/or local environmental agency.

3.4 Management of Buried Drums, Tanks or Abandoned Pipes

If buried drums, USTs, underground hydraulic lifts, or abandoned pipes are encountered during construction, the following actions should immediately be taken:

1. Stop work in the area where the buried drums, tanks and/or pipelines were identified.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. The Contractor or the Environmental Professional(s) should notify the appropriate local, state, and/or federal agency of the discovery if required by applicable regulations. Removal permits may be required for certain features (e.g., USTs, hydraulic lifts).
4. Mark the location on a site map and take photographs if possible.

If potentially contaminated soil is co-located with the drums, tank and/or pipes, then the procedures identified in Section 3.2 with respect to the potentially contaminated soil should be implemented.

3.4.1 Buried Drum Removal

Buried drums and their contents shall be removed from the excavation. The drums and contents should be placed in a sealed bin or bermed area that is covered with visqueen or other material to prevent discharge to soil or the atmosphere. Drum contents shall be characterized by the Environmental Professional(s) in accordance with hazardous waste laws and regulations and profiled for off-site disposal as required by the disposal facility. Following characterization, drums and contents shall be transported off site for disposal at an authorized facility in accordance with applicable laws and regulations.

3.4.2 Tank and/or Pipeline Removal

If USTs and associated piping systems are discovered during grading and excavation activities, removal shall be performed under appropriate permits and agency oversight. Collection of soil samples is likely to be required, and the Contractor performing the removal shall prepare or provide the Environmental Professional(s) with appropriate information with which to prepare a UST removal report.

3.5 Spills

In the event of a release of equipment fuel or other chemical, the Contractor will take the following actions, using appropriately trained personnel and appropriate personal protective equipment (PPE) as defined by the Contractor's health and safety plan:

Immediately clean up the spill to the extent possible

- If possible and appropriate for the situation, place containers under leaking equipment or damaged equipment or containers on secondary containment.
- Spills onto hard surfaces can be cleaned up by applying sorbent cloths or quick-dry material to the spill and subsequently containerizing the sorbent material in a rain-proof container, such as a 55-gallon drum.
- Spills onto soil can be cleaned up by excavating impacted soils and placing them into rain-proof containers or by creating a bermed, plastic-lined area to contain the impacted soils (see Section 3.2.2).

Report the Spill

- As soon as possible, following initial spill cleanup, contact the individuals identified in Attachment 1 to report the spill. In addition, the Environmental Professional(s) after consultation with the Responsible Entity or Contractor (as appropriate) should notify the appropriate local, state, and/or federal agencies of the spill if required by applicable laws or regulations.

Document the Spill

- Once initial spill response has been conducted, complete the Spill Reporting Form included as Attachment 3 and provide copies of the completed form to the individuals identified in Attachment 1. If possible, take photographs of the spill, spill area, and/or spill response activities.

Final Reporting

- Following cleanup of the spill, the Environmental Professional(s) will, if requested by Responsible Entity and/or required by applicable laws or regulations, report the results of cleanup activities to the appropriate agencies.

Obtain Approval Before Resuming Work

- Approval should be obtained from the Environmental Professional(s) before resuming work within the potentially affected area of the Site.

3.6 Notification of Discovery

If determined to be required and/or necessary and at the request of and on behalf of the Responsible Entity or Contractor, the Environmental Professional(s) will make the

appropriate notifications and report environmental findings to relevant agencies. Examples of such reportable findings may include discovery of significant impacts, free product, USTs, drums, or other subsurface features indicative of a known or potential release to the subsurface.

3.7 Off-Site Disposal

Soil that will be removed from the Site for off-site disposal will be characterized prior to transportation off site. Soil samples representative of the volume to be transported off site will be collected in-situ and/or from stockpiles and characterized using an analytical program developed in consideration of off-site disposal facility or third party acceptance requirements, and the DTSC's Information Advisory on Clean Imported Fill Material (Attachment 4). The soil to be off-hauled will be accepted by the disposal facility or third party prior to being removed from the Site.

All water to be removed from the Site, including excavation dewatering, storm water and vehicle wash water will be handled, and if necessary, transported and disposed in accordance with applicable local, state and federal regulations. Contaminated water will not be discharged to the land surface or subsurface of the Site. If encountered, impacted groundwater may be stored on Site temporarily pending characterization and disposal via transport to an off-site disposal facility, or via permitted discharge. Discharge to the sanitary sewer system is typically subject to the requirements of the local permitting authority (e.g., municipal wastewater agency), and depending on available characterization data, the agency may require additional sampling, on-site pre-treatment, and/or specify other limitations or conditions.

The Contractor, on behalf of the Responsible Entity, will arrange for transportation of all wastes off site using a permitted, licensed, and insured transportation company, and will be responsible for tracking final soil dispositions at appropriate disposal facilities. The Contractor must obtain approval from the Responsible Entity when identifying a potential disposal facility. Any soil considered Federal Resource Conservation and Recovery Act (RCRA) or California (non-RCRA) hazardous waste (hazardous waste) will be tracked using the Uniform Hazardous Waste Manifest System (USEPA Form 8700-22), as applicable. An appropriate USEPA Generator Identification Number will be recorded on the hazardous waste manifests used to document transport of hazardous waste off site. The hazardous waste transporter, disposal facility, and U.S. Department of Transportation (DOT) waste description required for each manifest will be determined on a case-by-case basis. Soil not considered hazardous waste will be tracked using non-hazardous bills of lading. These two systems will be used to comply with appropriate federal, state, and local requirements.

The Contractor will be responsible for accurate completion of the hazardous waste manifests and non-hazardous bills of lading. Records of all wastes shipped off site, including manifests and bills of lading, will be maintained by the Contractor and will be provided to the Environmental Professional(s) within a reasonable time, as they are generated, and included in the completion summary or report prepared at the conclusion of the project.

3.8 On-Site Soil Reuse

During initial redevelopment, soil on Site may be moved within site boundaries, and re-used without need for sampling, provided the soil is not obviously impacted (e.g., based on visual

or olfactory observations noted above), and is not generated in close proximity (i.e., within 20 feet) of impacted areas. The Environmental Professional shall be consulted and provide approval prior to reusing soil on Site. An on-site inspection by the Environmental Professional may be required.

As noted in Section 1, LUC areas are required to ensure that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing “native” soil.

Following completion of initial construction activities and within the boundaries of the LUC areas, soil that is impacted (or generated from areas in close proximity as described above), located beneath hardscaped areas, or located beneath the demarcation layer may not be re-used on site.

If sampling is conducted and soil is proposed for on-site reuse, sample data will be compared to then-current regulatory screening criteria appropriate for the proposed area of reuse (e.g., residential or commercial land use criteria such as DTSC Screening Levels [SLs], USEPA Regional Screening Levels [RSLs], or SFRWQCB Environmental Screening Levels [ESLs]). Soil that meets residential screening criteria may be reused without restriction, except for in the LUC areas as described above. Because health risk based screening criteria for arsenic are typically well below concentrations typically found in native soil in the Bay Area, the comparison criterion for arsenic will be 11 milligrams per kilogram (mg/kg), which is considered representative of typical Bay Area background concentrations (Duvergé, 2011).

3.9 Import Fill

No backfilling of an area containing potentially contaminated soil will be conducted without prior approval from the Environmental Professional(s).

Evaluation of any imported fill soil for the presence of contaminants must be concluded prior to consideration for use at the site (e.g. as backfill for excavations or trenching, or for raising site elevations). Unless from a documented “clean” import fill source such as a quarry, import fill will be evaluated to confirm the absence of chemical contaminants in accordance with the DTSC Information Advisory on Clean Imported Fill Material (Attachment 4).

Requirements for soil generated on Site that is proposed for re-use are outlined above.

Import fill data will be compared to DTSC SLs, USEPA RSLs, or SFRWQCB Environmental Screening Levels based on direct exposure and and/or vapor intrusion concerns, whichever is more stringent. As noted above, the comparison criterion for arsenic will be 11 mg/kg.

If the source location for the import fill cannot provide appropriate documentation acceptable to the Responsible Entity, Owner, and/or Environmental Professional(s) (e.g., data demonstrating that the soil does not contain unacceptable concentrations of contaminants), evaluation of the material should be conducted before it is transported and placed at the site. Information regarding import fill will be included in the completion summary or report prepared at the conclusion of the project.

3.10 Mission Bay RMP Requirements Summary (Applicable to Parcel 20)

Work conducted along the southern boundary of the Site (Mission Bay Parcel 20) shall be conducted in accordance with the Mission Bay RMP. The RMP for Mission Bay was prepared

in 1999 and provides specific protocols for managing chemicals in soil and groundwater in a manner that is protective of human health and the environment. The RMP was approved by the SFRWQCB with significant input from the DTSC and the SFDPH. Initially, the SFRWQCB was designated as lead agency for the Mission Bay Redevelopment Area, a responsibility that the agency passed to the SFDPH in approximately 2017.

The RMP delineates the specific risk management measures that must be implemented prior to, during, and after development of each parcel within the Mission Bay Redevelopment Area. Text of the Mission Bay RMP is included as Attachment 5 of this document; notification and reporting requirements (generally outlined in Sections 3 through 5 of the RMP) include a pre-work notification of plans for earth work, quarterly reporting regarding dust control activities, soil stockpile inspections and any new discoveries (e.g., USTs), a final completion report, and annual inspections. Many of these requirements overlap with the procedures outlined in this SMP.

3.11 Reporting

A Completion Report shall be prepared by the Responsible Entity following completion of activities covered by this SMP, in accordance with SFDPH requirements and the Maher Ordinance. The report shall describe SMP implementation, including a description and chronology of events, summary of any new analytical data collected, documentation regarding off-site disposal, and other backup information (e.g., figures, data tables, lab reports, hazardous waste manifests). The document will also be used to satisfy completion requirements for the portion of the site subject to the Mission Bay RMP.

In addition, in accordance with the 2019 Amended LUC, the Owner or Owner's designee shall conduct an annual inspection of the portion of the site to which the 2019 Amended LUC applies, verifying compliance with the LUC and shall submit an annual inspection report to the Department for its approval by January 30th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the annual inspection identifies any violations of the 2000/2019 LUC during the annual inspection or at any other time, the Owner or Owner's designee must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the LUC; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of the LUC shall be sent to the DTSC within 10 calendar days of its original transmission.

3.12 Future SMP Modifications

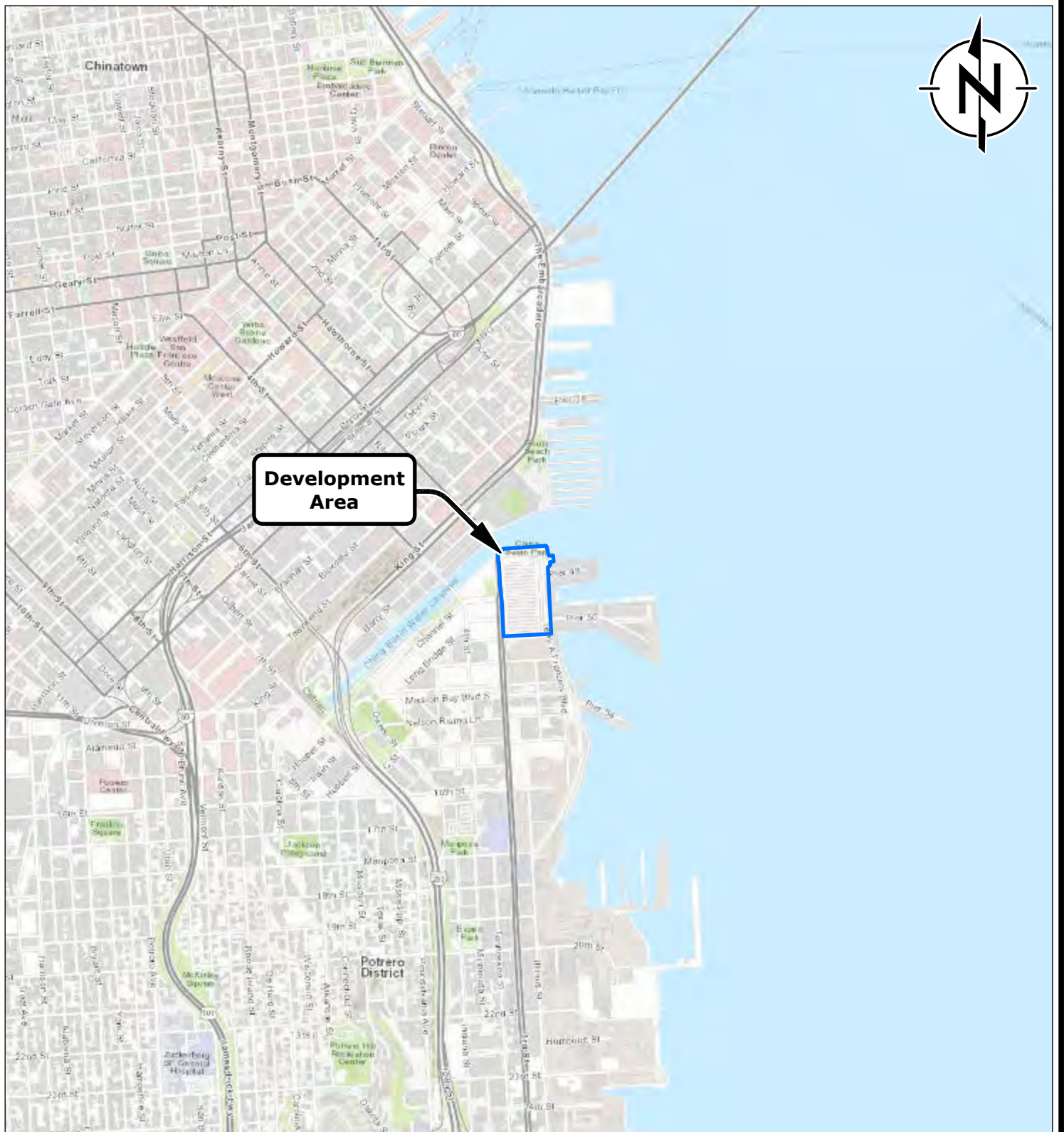
As redevelopment progresses, this SMP may require updates or modifications to accommodate changes in Site conditions or redevelopment plans, or to address localized issues that may arise during construction activities. Such requests for modification will be included in an SMP amendment, and (as warranted) submitted to SFDPH (and DTSC, if pertinent to a LUC Area) for review and approval.

4. REFERENCES


- Cal/EPA. 2019. HERO HHRA Note Number 3, Issue: DTSC-Modified Screening Levels (DTSC-SLs). April.
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- Ramboll US Corporation. 2019. Dust Control Plan, Mission Rock Development, San Francisco, California. October 18.
- San Francisco Bay Regional Water Quality Control Board (SFBRWQB). 2019. Environmental Screening Levels (ESLs). January.
- United States Environmental Protection Agency (USEPA). 2016. Particulate Matter (PM) Standards - NAAQS website. Available online at <https://www.epa.gov/criteria-air-pollutants/naaqs-table>. Accessed August 2019.

FIGURES

C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 1 - Site Location Map



Legend

 Development Area

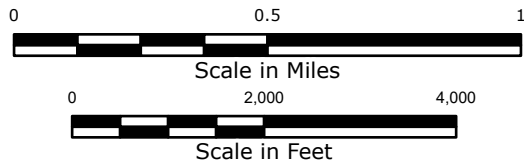
SOURCE:

The National Map, 2018.

Map Scale: 1: 1:24,000

Spatial Reference

Name: NAD 1983 StatePlane California III FIPS 0403 Feet; Map Center:



KEY MAP



Project Location Map
Mission Rock Development Area
San Francisco, California

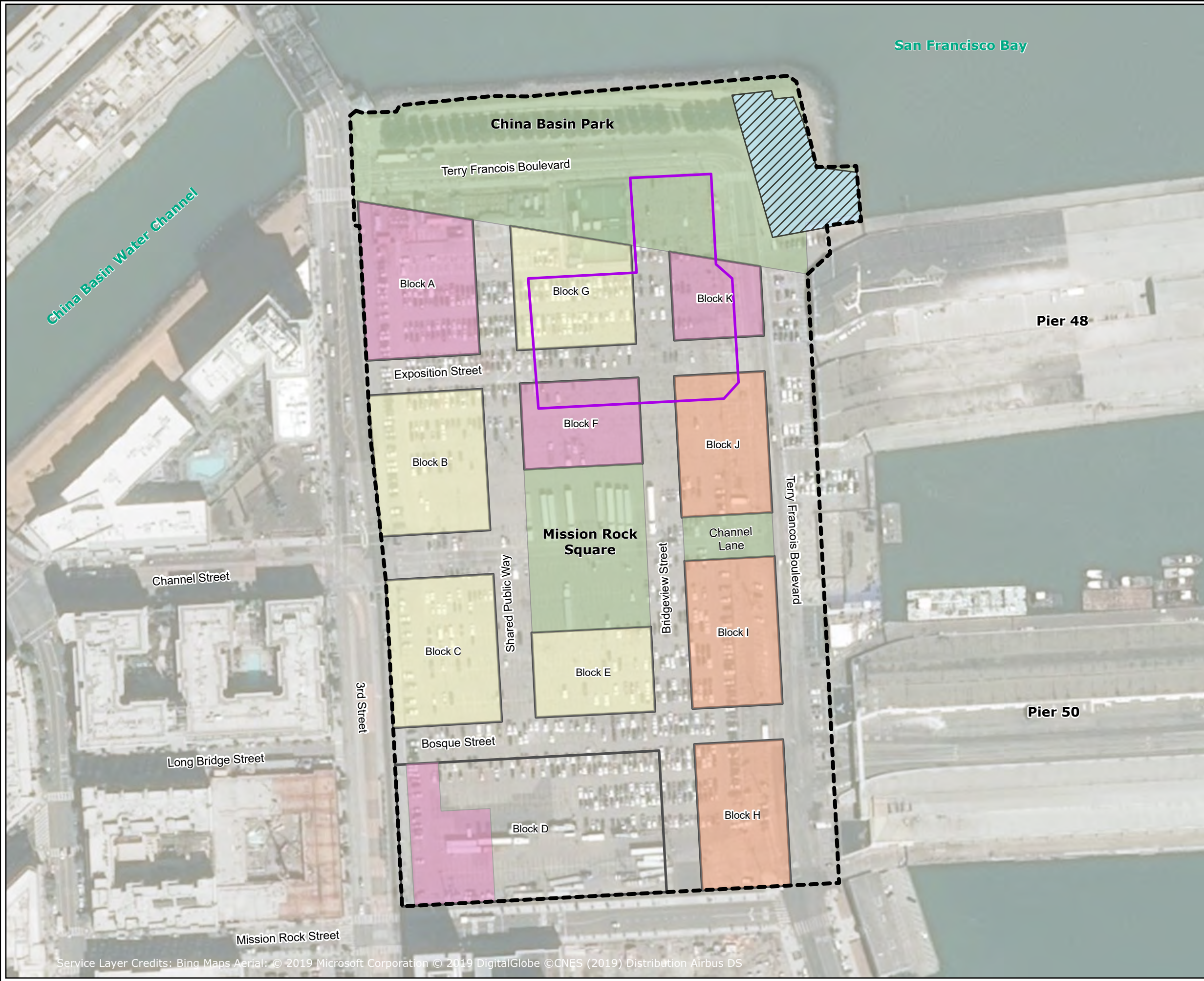
FIGURE
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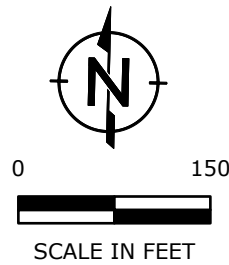
PROJECT: 1690001737

C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 2 - Site Plan



Service Layer Credits: Bing Maps Aerial: © 2019 Microsoft Corporation © 2019 DigitalGlobe ©CNES (2019) Distribution Airbus DS

- Legend**
- Development Boundary
 - Site Boundary
 - 2002 LUC Area (approximate)
 - Proposed Land Use
 - Commercial
 - Open Space
 - Residential
 - Flex Residential/Commercial
 - Block Boundary



Project Layout

Mission Rock Development Area
San Francisco, California



FIGURE
2

ATTACHMENT 1
CONTACT INFORMATION FOR NOTIFICATION

NOTIFICATION INFORMATION (UPDATE AS NEEDED)

Name (Entity)	Responsibilities	Contact Details
Steve Minden (Tishman Speyer)	Responsible Entity Representative	O: (415) 536 1850 C: (213) 458 1272 SMinden@TishmanSpeyer.com
To Be Determined	Contractor Representative	O: C:
Nick Walchuk, PG (Ramboll)	Environmental Professional	O: (510) 420-2559 C: (510) 847-5905 nwalchuk@ramboll.com

ATTACHMENT 2
FIELD REPORT FORM

Field Reporting Form – Potentially Contaminated Soil		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional(s)		
Soil Information		
Describe the potentially-impacted material (e.g. discoloration/staining, odor, oily sheen, presence of free flowing or floating oil/petroleum, serpentine-containing fill material, etc.)		
Estimated Extent of Potentially Impacted Soil (ft) (horizontal and vertical):		
<ul style="list-style-type: none"> Estimated horizontal extent (in feet): Estimated depth below ground surface (in feet): 		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Groundwater and Surface Water Information		
If impacts were discovered while excavating, was water encountered? YES / NO		
If groundwater was encountered, was any sheen or oil visible on the surface of the water? YES / NO		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

ATTACHMENT 3
SPILL REPORTING FORM

Spill Reporting Form		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional		
Spill Information		
What kind of material was spilled?		
What is the estimated volume of material spilled (in gallons)?		
Was the material spilled on a paved (asphalt/concrete) surface or on bare ground?		
Did any of the spilled material enter storm water or sewer drains, enter drainage ditches, or leave the site?		
Estimated Extent of the spill-affected area: <ul style="list-style-type: none"> • Estimated horizontal extent (in feet): • Estimated depth below ground surface (in feet): 		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

ATTACHMENT 4
DTSC'S INFORMATION ADVISORY
ON CLEAN IMPORTED FILL MATERIAL

October 2001

Information Advisory

Clean Imported Fill Material



DEPARTMENT OF TOXIC SUBSTANCES CONTROL

It is DTSC's mission to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.

State of California



California
Environmental
Protection Agency



Executive Summary

This fact sheet has been prepared to ensure that inappropriate fill material is not introduced onto sensitive land use properties under the oversight of the DTSC or applicable regulatory authorities. Sensitive land use properties include those that contain facilities such as hospitals, homes, day care centers, and schools. This document only focuses on human health concerns and ecological issues are not addressed.

It identifies those types of land use activities that may be appropriate when determining whether a site may be used as a fill material source area. It also provides guidelines for the appropriate types of analyses that should be performed relative to the former land use, and for the number of samples that should be collected and analyzed based on the estimated volume of fill material that will need to be used. The information provided in this fact sheet is not regulatory in nature, rather is to be used as a guide, and in most situations the final decision as to the acceptability of fill material for a sensitive land use property is made on a case-by-case basis by the appropriate regulatory agency.

Introduction

The use of imported fill material has recently come under scrutiny because of the instances where contaminated soil has been brought onto an otherwise clean site. However, there are currently no established standards in the statutes or regulations that address environmental requirements for imported fill material. Therefore, the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has prepared this fact sheet to identify procedures that can be used to minimize the possibility of introducing contaminated soil onto a site that requires imported fill material. Such sites include those that are undergoing site remediation, corrective action, and closure activities overseen by DTSC or the appropriate regulatory agency. These procedures may also apply to construction projects that will result in sensitive land uses. The intent of this fact sheet is to protect people who live on or otherwise use a sensitive land use property. By using this fact sheet as a guide, the reader will minimize the chance of introducing fill material that may result in potential risk to human health or the environment at some future time.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.dtsc.ca.gov.

Overview

Both natural and manmade fill materials are used for a variety of purposes. Fill material properties are commonly controlled to meet the necessary site specific engineering specifications. Because most sites requiring fill material are located in or near urban areas, the fill materials are often obtained from construction projects that generate an excess of soil, and from demolition debris (asphalt, broken concrete, etc.). However, materials from those types of sites may or may not be appropriate, depending on the proposed use of the fill, and the quality of the assessment and/or mitigation measures, if necessary. Therefore, unless material from construction projects can be demonstrated to be free of contami-

nation and/or appropriate for the proposed use, the use of that material as fill should be avoided.

Selecting Fill Material

In general, the fill source area should be located in nonindustrial areas, and not from sites undergoing an environmental cleanup. Nonindustrial sites include those that were previously undeveloped, or used solely for residential or agricultural purposes. If the source is from an agricultural area, care should be taken to insure that the fill does not include former agricultural waste process byproducts such as manure or other decomposed organic material. Undesirable sources of fill material include industrial and/or commercial sites where hazardous ma-

Potential Contaminants Based on the Fill Source Area

Fill Source:	Target Compounds
Land near to an existing freeway	Lead (EPA methods 6010B or 7471A), PAHs (EPA method 8310)
Land near a mining area or rock quarry	Heavy Metals (EPA methods 6010B and 7471A), asbestos (polarized light microscopy), pH
Agricultural land	Pesticides (Organochlorine Pesticides: EPA method 8081A or 8080A; Organophosphorus Pesticides: EPA method 8141A; Chlorinated Herbicides: EPA method 8151A), heavy metals (EPA methods 6010B and 7471A)
Residential/acceptable commercial land	VOCs (EPA method 8021 or 8260B, as appropriate and combined with collection by EPA Method 5035), semi-VOCs (EPA method 8270C), TPH (modified EPA method 8015), PCBs (EPA method 8082 or 8080A), heavy metals including lead (EPA methods 6010B and 7471A), asbestos (OSHA Method ID-191)

**The recommended analyses should be performed in accordance with USEPA SW-846 methods (1996). Other possible analyses include Hexavalent Chromium: EPA method 7199*

Recommended Fill Material Sampling Schedule

Area of Individual Borrow Area	Sampling Requirements
2 acres or less	Minimum of 4 samples
2 to 4 acres	Minimum of 1 sample every 1/2 acre
4 to 10 acres	Minimum of 8 samples
Greater than 10 acres	Minimum of 8 locations with 4 subsamples per location
Volume of Borrow Area Stockpile	Samples per Volume
Up to 1,000 cubic yards	1 sample per 250 cubic yards
1,000 to 5,000 cubic yards	4 samples for first 1000 cubic yards + 1 sample per each additional 500 cubic yards
Greater than 5,000 cubic yards	12 samples for first 5,000 cubic yards + 1 sample per each additional 1,000 cubic yards

materials were used, handled or stored as part of the business operations, or unpaved parking areas where petroleum hydrocarbons could have been spilled or leaked into the soil. Undesirable commercial sites include former gasoline service stations, retail strip malls that contained dry cleaners or photographic processing facilities, paint stores, auto repair and/or painting facilities. Undesirable industrial facilities include metal processing shops, manufacturing facilities, aerospace facilities, oil refineries, waste treatment plants, etc. Alternatives to using fill from construction sites include the use of fill material obtained from a commercial supplier of fill material or from soil pits in rural or suburban areas. However, care should be taken to ensure that those materials are also uncontaminated.

Documentation and Analysis

In order to minimize the potential of introducing contaminated fill material onto a site, it is necessary

to verify through documentation that the fill source is appropriate and/or to have the fill material analyzed for potential contaminants based on the location and history of the source area. Fill documentation should include detailed information on the previous use of the land from where the fill is taken, whether an environmental site assessment was performed and its findings, and the results of any testing performed. It is recommended that any such documentation should be signed by an appropriately licensed (CA-registered) individual. If such documentation is not available or is inadequate, samples of the fill material should be chemically analyzed. Analysis of the fill material should be based on the source of the fill and knowledge of the prior land use.

Detectable amounts of compounds of concern within the fill material should be evaluated for risk in accordance with the DTSC Preliminary Endangerment Assessment (PEA) Guidance Manual. If

metal analyses are performed, only those metals (CAM 17 / Title 22) to which risk levels have been assigned need to be evaluated. At present, the DTSC is working to establish California Screening Levels (CSL) to determine whether some compounds of concern pose a risk. Until such time as these CSL values are established, DTSC recommends that the DTSC PEA Guidance Manual or an equivalent process be referenced. This guidance may include the Regional Water Quality Control Board's (RWQCB) guidelines for reuse of non-hazardous petroleum hydrocarbon contaminated soil as applied to Total Petroleum Hydrocarbons (TPH) only. The RWQCB guidelines should not be used for volatile organic compounds (VOCs) or semi-volatile organic compounds (SVOCS). In addition, a standard laboratory data package, including a summary of the QA/QC (Quality Assurance/Quality Control) sample results should also accompany all analytical reports.

When possible, representative samples should be collected at the borrow area while the potential fill material is still in place, and analyzed prior to removal from the borrow area. In addition to performing the appropriate analyses of the fill material, an appropriate number of samples should also be determined based on the approximate volume or area of soil to be used as fill material. The table above can be used as a guide to determine the number of samples needed to adequately characterize the fill material when sampled at the borrow site.

Alternative Sampling

A Phase I or PEA may be conducted prior to sampling to determine whether the borrow area may have been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with DTSC or appropriate regulatory agency. However, if it is not possible to analyze the fill material at the borrow area or determine that it is appropriate for use via a Phase I or PEA, it is recommended that one (1) sample per truckload be collected and analyzed for all com-

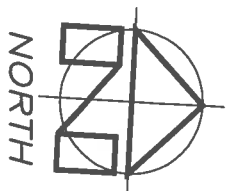
pounds of concern to ensure that the imported soil is uncontaminated and acceptable. (See chart on Potential Contaminants Based on the Fill Source Area for appropriate analyses). This sampling frequency may be modified upon consultation with the DTSC or appropriate regulatory agency if all of the fill material is derived from a common borrow area. However, fill material that is not characterized at the borrow area will need to be stockpiled either on or off-site until the analyses have been completed. In addition, should contaminants exceeding acceptance criteria be identified in the stockpiled fill material, that material will be deemed unacceptable and new fill material will need to be obtained, sampled and analyzed. Therefore, the DTSC recommends that all sampling and analyses should be completed prior to delivery to the site to ensure the soil is free of contamination, and to eliminate unnecessary transportation charges for unacceptable fill material.

Composite sampling for fill material characterization may or may not be appropriate, depending on quality and homogeneity of source/borrow area, and compounds of concern. Compositing samples for volatile and semivolatile constituents is not acceptable. Composite sampling for heavy metals, pesticides, herbicides or PAH's from unanalyzed stockpiled soil is also unacceptable, unless it is stockpiled at the borrow area and originates from the same source area. In addition, if samples are composited, they should be from the same soil layer, and not from different soil layers.

When very large volumes of fill material are anticipated, or when larger areas are being considered as borrow areas, the DTSC recommends that a Phase I or PEA be conducted on the area to ensure that the borrow area has not been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with the DTSC.

For further information, call Richard Coffman, Ph.D., R.G., at (818) 551-2175.

ATTACHMENT 5
EXCERPT: MISSION BAY RISK MANAGEMENT PLAN
APPLICABLE TO SOUTHERN SITE BOUNDARY ONLY



THIRD STREET
(WIDTH VARIES)

12.50'

N03°10'56"W
23.36'

AREA TO BE REMOVED FROM
THE MISSION BAY SOUTH
REDEVELOPMENT PLAN
16,367 SQ.FT.

N86°49'03"E 384.92'

2.00'
63.25'

FUTURE MISSION ROCK STREET
(65.25' WIDE)

S86°49'04"W 673.43'

N17°34'00"W
2.58'

N86°49'04"E
282.39'

BLOCK P20

STATE TRUST
PARCEL 5
(99-G622164)

S17°50'32"E
26.73'

FUTURE
TERRY A. FRANCOIS BLVD.
(WIDTH VARIES)

AREA TO BE REMOVED FROM THE MISSION BAY
SOUTH REDEVELOPMENT PLAN

BY JP CHKD. BR DATE 9/8/17 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229-MASTER LEASE
PROPERTY PLATS.dwg

**RISK MANAGEMENT PLAN
MISSION BAY AREA
SAN FRANCISCO, CALIFORNIA**

Submitted to:

California Regional Water Quality Control Board
San Francisco Bay Region

California Environmental Protection Agency
Department of Toxic Substances Control

Prepared by:

ENVIRON Corporation
Emeryville, CA

May 11, 1999
03-6381S

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GLOSSARY

ABAG	Association of Bay Area Governments
Agency	San Francisco Redevelopment Agency
BMP	Best Management Practices
BTEX	benzene, toluene, ethylbenzene and xylenes
Cal/EPA	California Environmental Protection Agency
City	City and County of San Francisco
DataRAM	Real-time dust monitoring instrument
Development	defined in Section 1.0
DTSC	Department of Toxic Substances Control
EHASP	Environmental Health and Safety Plan
Fill	defined in Section 4.3.5.5
Free Product	defined in Section 4.4
FSEIR	Final Subsequent Environmental Impact Report
General Permit	General Permit for discharge of stormwater from construction sites per SWRCB Order No. 92-08 DWQ, discussed in Section 4.3.3
HI	Hazard Index
ITL	Interim Target Level; defined in Section 3.1
Inorganics	Metals (identified in Appendix A), Asbestos, Fluoride and Sulfide
Interim Period	defined in Section 3.1
IRRM	Interim Risk Management Measures
Native Soils	defined in Section 1.0
NPDES	National Pollutant Discharge Elimination System
OVA	Organic Vapor Analyzer
OVN	Organic Vapor Meter
Owner	defined in Section 1.0
PAH	Polycyclic Aromatic Hydrocarbons
PCBs	Polychlorinated Biphenyls
PEL	Permissible Exposure Limit; defined in Section 4.3.8.2
PM ₁₀	Particulate Matter with aerodynamic diameter less than 10 microns
PPE	Personal Protective Equipment; defined in Section 4.3.8.2
Redevelopment Plans	defined in Section 1.0
RMP	Risk Management Plan
RMP Area	defined in Section 1.0
RWQCB	Regional Water Quality Control Board for the San Francisco Bay Region
SSTL	Site Specific Target Level; defined in Section 4.3.5.5.1
SVOC	Semivolatile organic compounds
SFDPH	San Francisco Department of Public Health
SFDPW	San Francisco Department of Public Works
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TPH-d	Total Petroleum Hydrocarbons, in the diesel range
TPH-g	Total Petroleum Hydrocarbons, in the gasoline range
TPH-mo	Total Petroleum Hydrocarbons, in the motor oil range

GLOSSARY (Continued)

UCL	Upper confidence limit
UCSF	University of California, San Francisco
USEPA	United States Environmental Protection Agency
UST	Underground Storage Tank
VOC	Volatile Organic Compound

3.0 RISK MANAGEMENT MEASURES PRIOR TO DEVELOPMENT

3.1 Introduction

The purpose of the following section is to describe the interim risk management measures (IRMM) that will be implemented to minimize potential impacts associated with the exposed Native Soils that may exist on parcels within the RMP Area during the Interim Period, which is defined for each parcel as the period of time between: (i) the date that the RMP is approved and the Environmental Covenant is recorded against the parcel and; (ii) the commencement of development of that parcel. These management measures apply to all parcels within the RMP Area before development of the parcel commences; the IRMMs are developed to be protective of populations on both the undeveloped parcel and on developed parcels that may be located directly adjacent to areas that have not been developed and therefore may contain exposed Native Soils. The IRMMs are based, in part, on an analysis of the potential human health risks posed by the exposed Native Soils that exist on parcels within the RMP Area. The human health risk evaluation was conducted by developing chemical-specific interim target levels (ITLs) that will be protective of the human populations that could be exposed to the uncovered soils based on projected future uses, prior to commencement of development (ENVIRON 1999). A comparison of the concentrations of chemicals detected in soils to the health-based ITLs provided the basis for identifying areas where interim risk management measures are appropriate, and the foundation for developing an overall site-wide interim plan that will manage existing conditions in the RMP Area until development throughout the RMP Area is complete. Implementation of the IRMMs outlined in this section will reduce the potential human health impacts posed by exposed Native Soils prior to development, and will simultaneously fulfill other long-term property management objectives. Risk management measures outlined here are protective of human health and the environment during the respective Interim Periods for each parcel. The risk management measures that will be implemented to lessen impacts associated with the actual construction and development of parcels within the RMP Area (e.g., impacts associated with dust

generated during construction), including the soil management procedures and the measures to protect the construction workers involved in the buildout of the RMP Area, are discussed in Section 4.0.

3.2 Risk Management Measures to be Implemented on Parcels Prior to Commencement of Development

The risk management objective for the Interim Period is to protect current and future populations from the potential impacts associated with exposed Native Soils that exist on various parcels throughout the RMP Area. To achieve this objective, risk-based evaluations were conducted to determine whether exposure to Native Soils present on parcels within the RMP Area could pose a risk to populations who could be present in the RMP Area throughout the period of development. Health-based ITLs were calculated for each of the chemicals present in the exposed Native Soils using standard United States Environmental Protection Agency (USEPA) and Department of Toxic Substance Control (DTSC) risk assessment protocols. The ITLs were developed by assuming that human populations in the area could be exposed to the Native Soils through the inhalation of fugitive dusts, soil ingestion, and dermal contact exposure pathways for an extended 25- to 30- year period.

The results of the risk-based evaluations indicated that exposure to the chemicals present in the Native Soils through the inhalation of fugitive dusts generated from natural wind erosion will not adversely impact the health of either current or future populations who may be present in or adjacent to the RMP Area. In addition, mean chemical concentrations in surface soil (estimated by calculating the 95 percent upper confidence limit (UCL) of the arithmetic mean) were below the ITLs developed under assumptions of long-term (i.e., 25 to 30 years) direct contact pathways (i.e., soil ingestion and dermal contact). However, several individual locations within the RMP Area contain chemicals (primarily metals) that exceed the health-based ITLs. The health-based ITLs (Tables B-1 through B-3), a comparison of the lowest of the ITLs to concentrations detected within the RMP Area (Table B-4), and a figure indicating the specific locations where levels of chemicals exceed the health-based ITLs (Figure B-1), are presented in Appendix B.

Although a review of the average concentrations of chemicals in surface soils indicates that even long-term (i.e., 25 to 30 year) direct contact with exposed Native Soil would not be

expected to adversely impact human health, any form of risk management that minimizes long-term direct contact with the Native Soils will be effective in minimizing potential risks associated with long-term direct contact with the soils and will be protective of all individuals that may be present in the RMP Area throughout the Interim Period. Risk management measures which will restrict unauthorized access to the exposed Native Soils will minimize the potential for long-term direct contact, and will provide additional benefits such as limiting the unauthorized use of the RMP Area by trespassers, reducing the potential for unauthorized dumping, and improving the overall aesthetic quality of the area. Given the multiple benefits gained from controlling access, the following IRMMs will be implemented by Owners or their designees:

- i) Install Fencing and Gates to Restrict Unauthorized Access to Exposed Native Soils. Fencing and gates will be installed on all parcels that contain areas of exposed Native Soils, as depicted in Figure B-2. The fences will be chain link or equivalent fences that are a minimum of 6 feet in height. The fences will be of sufficient integrity such that they can withstand adverse weather conditions (e.g., heavy rains or winds). As indicated in Figure B-2, the portions of the RMP Area that are not fenced include: i) areas that are covered by asphalt, concrete, or buildings; or ii) railroad right-of-ways which are covered with a minimum of one-foot of ballast (aggregate). The installation of fencing will restrict unauthorized access to vacant parcels with exposed Native Soil. Fencing will also limit the potential for vehicles to travel on unauthorized areas and generate dusts. In addition to the installation of fencing, “No Trespassing” signs will be posted every 250 feet to inform individuals that access to the fenced areas is illegal. Fencing will remain until the areas of exposed Native Soils are covered or until development of a parcel commences, at which time the management measures governing the development of a parcel (described in Section 4.0) must be followed. It is the responsibility of the Owner or Lessee of each parcel (or the Owner or Lessee’s delegate) to maintain fencing.

- ii) Install Fencing on Parcels that Become Vacant During the Interim Period. Any parcels where demolition or other activities will result in the uncovering of soils during the Interim Period shall be fenced within three working days after demolition so that access to any exposed Native Soils on the parcels is restricted. As described above, fencing will be maintained until development of the parcel commences or the parcel is paved or otherwise covered.

- iii. Regulatory Approval Required for Specified Interim Uses. As described in the Redevelopment Plans, there will from time to time be additional industrial/commercial uses which may occur in areas with exposed Native Soils within the RMP Area prior to the time “development”, as defined in Section 1.0, occurs. A comparison of the maximum concentrations detected in the surface soils to the ITLs developed for the commercial/industrial scenario indicates that only substantial daily contact with exposed Native Soils occurring for more than two and one-half years would potentially be of concern and would warrant any form of further evaluation or regulatory approval¹. New interim leases, which would permit substantial contact with exposed Native Soils for more than two and one-half years are not permitted, absent written approval of the RWQCB. The phrase “substantial contact with exposed Native Soils” would include any enterprise whose primary area of activity was located over or in the exposed Native Soils. An example of a new interim lease that would require RWQCB approval would include a parking lot operation located on exposed Native Soils where employees could potentially be continuously exposed to such Native Soils for more than 2.5 years. Examples of contact with exposed Native Soils which are not substantial in nature are businesses whose route of egress and ingress involve driving or walking across such Native Soils or involves employee parking on such Native Soils.

¹ The threshold exposure period of two and one half years was determined by adjusting the commercial worker ITLs to account for worker exposures that might occur for periods of less than the assumed 25 years. Commercial worker ITLs developed

- iv) Notification of Tenants. All Lessees and other tenants in the RMP Area will be notified by the Owner that the existing cover (asphalt, concrete, vegetation) is to remain intact. Lessees and tenants will be informed of the need to adopt certain health and safety measures, described in Section 4.0 of this RMP, if such measures are necessary.
- v) Conduct All Subsurface Repair Work in Compliance with the Worker Health and Safety Guidelines. All subsurface repair work where workers will come into direct contact with Native Soils, such as the repair of an existing utility or sewer line, will be conducted in compliance with the relevant health and safety guidelines, as described in Section 4.0.
- vi) Conduct Periodic Monitoring. In order to verify that the risk management measures that are implemented remain effective in restricting unauthorized access to exposed Native Soils during development of the RMP Area, the RMP Area will be inspected on a quarterly basis by the respective property Owners (or designees). The inspections will be conducted to verify that the access restriction measures are in place, and will identify areas where temporary fencing might need to be reinstalled. Additionally, the monitoring will include inspections of the asphalt-covered areas to verify that breaches in the existing cover have not occurred. A breach in the cover is a condition in which prolonged direct contact with Native Soils could occur. If the inspections identify areas where the fencing has been removed, or the existing cover has been breached, then one of the following response actions will be implemented as soon as reasonably practicable: 1) restore the fencing or install new fencing; or 2) repair the cover. Owners shall submit copies of the quarterly inspection reports to the RWQCB and the SFDPH by January 31 of each year on an annual basis. A Reporting Checklist

assuming daily direct contact with soils for 2.5 years (as opposed to the default assumption of 25 years) are less than the maximum concentrations detected in the surface soil across the RMP Area.

is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample inspection sheet, which contains the minimum items that are to be inspected during the monitoring program, is also provided in Appendix C.

- vii) Existing Soil Stockpiles: Management of soil stockpiles that exist within the RMP Area prior to the commencement of development, will occur in accordance with the soil stockpile procedures delineated in Section 4.3.5.2.

Implementation of these IRMMs will control access to exposed Native Soils that exist within the RMP Area and may exist throughout the Interim Period, and will protect the health of individuals who may be present during the phased development and occupancy of the RMP Area. This Section 3.0 is not intended to and does not set forth all environmental requirements unrelated to hazardous materials which might apply to the RMP Area prior to development, such as general dust control requirements. Any such applicable requirements will continue to apply independent of the RMP.

4.0 RISK MANAGEMENT MEASURES DURING DEVELOPMENT

4.1 Introduction

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to control potential impacts to human health and the environment associated with exposure to constituents present in the soil and ground water that could result from the construction activities and development of the RMP Area. The risk management measures were developed following the identification and analysis of each potential impact; implementation of these management measures will protect human health, including on-site construction workers, nearby residents and workers, and the environment from potential impacts that may arise during the construction and development of the RMP Area. As described below in Section 4.3.11, additional sampling may be required on individual development parcels in order to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Depending on the results obtained during any additional sampling, supplemental management measures, in addition to the management measures identified below, may be required on a parcel-by-parcel basis.

Section 4.2 identifies the potential activities associated with the construction and development of the RMP Area that could impact human health and the ecological environment. The risk management measures that will be implemented during development within the RMP Area are described in Section 4.3. Section 4.4 describes measures to be implemented in the Free Product Area in addition to those described in Section 4.3.

4.2 Identification of Development Activities that Could Impact Human Health and/or the Ecological Environment

Development activities in the RMP Area are likely to include various site preparation activities, such as but not limited to excavation, stockpiling, trenching, grading, backfilling and dewatering that will disturb the Native Soils and ground water within the RMP Area.

Based on the types of constituents detected in the Native Soils and ground water (discussed in Section 2.0), the potential events or activities associated with the development of the RMP Area that could result in potential impacts on human health and/or the ecological environment without implementation of appropriate risk management measures are listed below.

- Dust generation associated with soil excavation and trenching, grading and loading activities, backfilling, movement of construction and transportation equipment, and fugitive dust generation from winds traversing an exposed soil stockpile;
- Off-site transport of soils as sediments through surface water run-off from exposed soil stockpiles and graded areas;
- The inadvertent creation of horizontal conduits from utility trenches resulting in preferential pathways for ground water flow within the RMP Area;
- Management/movement of soils during construction;
- Identification of unknown subsurface structures and unknown areas of contamination;
- Unauthorized access to site during construction; and
- Dewatering activities.

The risk management measures that will control potential impacts associated with each of the events or activities listed above are described in the following section. Management measures that will be implemented to control potential impacts on the construction worker, contractors and short-term intrusive workers who may be engaged in limited excavation activities such as utility repair, are also described below.

4.3 Risk Management Measures to be Implemented During Development Activities

The following subsections identify the risk management measures that will be implemented to reduce potential impacts from the development of the RMP Area and describe the compliance monitoring that will be implemented during development. The risk management measures described below are applicable to all locations within the RMP Area. Additional management measures that will be implemented during development within the Free Product Area are described in Section 4.4.

4.3.1 Dust Control

Contractors will implement the following dust control measures during development activities in order to minimize and control the generation of dust. Effective dust control will reduce potential

impacts on construction workers, and will simultaneously control nuisance dust and dust containing chemicals from migrating outside of the development area to surrounding populations. Dust control measures will minimize dust that may be generated from excavation and trenching activities, grading, the loading of trucks, truck traffic, and soil stockpiles. The dust control measures described below apply to soil stockpiles that are in place for less than a 30-day period (referred to as construction stockpiles). Management measures specific to stockpiles that are stored for more than 30 days are identified in Section 4.3.5.2.

Prior to the initiation of development on a given parcel, the Owner, Lessee, or their designee (most likely a contractor) will submit to SFDPH and to the RWQCB written notification indicating whether the proposed development is of the type that will require dust monitoring, as described in Section 4.3.2.

4.3.1.1 Specific Dust Control Measures

The dust control measures that will be implemented at all construction sites within the RMP Area are identified below. The dust control measures identified below correspond to the PM₁₀ control measures recommended by the Bay Area Air Quality Management District (BAAQMD) in their California Environmental Quality Act Guidelines. The BAAQMD dust control guidelines are to be implemented during construction activities regardless of whether chemicals are present in the soil. Some of the dust control measures recommended by the BAAQMD, as described below, are similar to the measures that will be implemented to control off-site runoff, described in Section 4.3.3. Where management measures specified to control dust are different from those specified to control off-site runoff, the more stringent of the measures will apply.

The following dust control measures will be implemented at construction sites of all sizes:

- Water all active construction areas at least twice a day or as necessary to prevent visible dust plumes from migrating outside of the parcel under development.

- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed construction stockpiles. Management measures for stockpiles stored for more than 30 days are described under Section 4.3.5.2.
- Mist or spray water while loading transportation vehicles.
- Minimize drop heights while loading transportation vehicles.
- Use tarpaulins or other effective covers for trucks carrying soils that travel on streets.
- Pave, apply water three times per day, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily all paved access routes, parking areas and staging areas.
- Sweep street daily if visible soil material is carried onto public streets.

If construction sites are greater than four acres in size, then the following additional dust control measures will be implemented:

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Limit traffic speeds on unpaved roads to 15 miles per hour (mph).
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways (discussed further under the control of off-site runoff, Section 4.3.3).
- Replant vegetation in disturbed areas as quickly as possible.

The following additional optional dust control measures may be implemented by the contractor, as necessary, particularly if windy conditions persist before the area being developed is covered. A determination as to whether optional dust control measures should be implemented will be made by the contractor on a case-by-case basis based, in part, on the results of the Dust Plan outlined in 4.3.2. Additional control measures that could be implemented to reduce dust may include:

- Installing wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Installing wind breakers, or plant trees/vegetative wind breakers at windward sides(s) of construction areas.
- Suspending excavation and grading activities when winds (instantaneous gusts) exceed 25 mph.
- Limiting the area subject to excavation, grading and other construction activities at any one time.

4.3.1.2 Documentation of Dust Control Measures

Contractors will keep daily logs of all dust control measures that are implemented throughout the course of the day. Logs will be kept on file for three months following the completion of the activities that triggered implementation of the dust control measures.

4.3.2 Dust Plan

In conjunction with the dust control measures identified above, the Owner or Lessee, (or some other entity, such as a contractor, designated or certified by the Owner or Lessee), will follow this dust plan (the “Plan”) during construction activities to demonstrate that the health and safety of all off-site populations (where off-site refers to areas outside of the construction zone) is not being adversely impacted by the construction/development activities based on the chemicals that could be attached to the dusts. Potential exposures to the onsite construction worker are discussed in Section 4.3.8. If the Plan described in the following sections is implemented, then additional regulatory approvals will not be required.

A screening-level risk analysis was conducted to determine the potential impacts associated with unmitigated dusts generated during construction activities (ENVIRON 1998b). Based on the results of the risk analysis, it was concluded that as long as the annual average respirable dust levels at off-site receptor locations remained below $250 \mu\text{g}/\text{m}^3$, exposure to the chemicals that may be attached to the dusts will not adversely impact human health. This analysis assumed that exposure to the dusts will occur continuously for 20 years. Accordingly, the Plan has been devised to verify that the long-term average off-site dust levels to which

individuals could be exposed during the course of the 20-year development are at or below the 250 $\mu\text{g}/\text{m}^3$ target level.

The Plan is comprised of two parts. The first part identifies those conditions where real-time dust monitoring is not required. The exclusion of certain sites from the dust monitoring requirements was based on a conservative screening-level analysis. Those sites where it was concluded that off-site annual average concentrations would not exceed 250 $\mu\text{g}/\text{m}^3$ were identified, and will be exempt from the dust monitoring requirements. The second part of the Plan presents a real-time dust monitoring program (the "Program"). An Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can implement the following procedures or can choose to prepare its own monitoring program, as long as it has, at a minimum, the elements of the Program described in Part II below. In the sections below, 'Site' is defined as the area on which the development by that contractor is occurring. 'Dust-generating activity' is defined to be the activity for which dust monitoring may be necessary, and includes grading, excavation, trenching, soil stockpiling, backfilling, the handling and movement of Native Soils, or vehicular traffic on an unpaved surface.

4.3.2.1 Part I: Sites Excluded from Dust Monitoring Program

Implementation of a dust monitoring program will not be necessary if it can be shown that the off-site annual average concentration will not exceed 250 $\mu\text{g}/\text{m}^3$. Listed below are situations for which PM_{10} (i.e., particulate matter with aerodynamic diameter less than 10 microns in diameter) concentrations will not exceed an annual average concentration of 250 $\mu\text{g}/\text{m}^3$, even assuming the dust control measures identified in Section 4.3.1 have not been implemented. The following examples are not intended as a comprehensive list; if an Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can demonstrate to the RWQCB other conditions satisfying the 250 $\mu\text{g}/\text{m}^3$ threshold, a monitoring program will not be required. Note that even if a monitoring program is not required, the dust control measures discussed in Section 4.3.1 are still required.

- Potentially exposed populations are not closer than the distances shown in Figure 4. Worst-case annual average concentrations were modeled using USEPA's SCREEN3 air dispersion model to determine the distance at which ambient concentrations will be below an annual average of $250 \mu\text{g}/\text{m}^3$. Modeling was performed for an area source using an uncontrolled emission rate of 51 lb/acre/day (used in the Mission Bay Final Subsequent Environmental Impact Report (FSEIR) as the estimate of emissions from construction sites) and worst-case meteorological conditions.

Figure 4 presents the relationship between the size of the Site (determined by either the length or width of the Site, whichever is greater) and the distance at which the annual average concentration will be below $250 \mu\text{g}/\text{m}^3$, and identifies those combinations where dust monitoring will not be required. Conditions that fall above the line in Figure 4 would not require any dust monitoring, whereas conditions below the line would require implementation of the dust monitoring program described below. As an example, if the length of the Site (widest or longest dimension) is 440 feet, dust monitoring would need to be conducted if receptors (i.e., off-site workers or residents) are located within 100 feet of the Site.

- Repair or maintenance of underground utility lines. In contrast to large grading projects, underground utility maintenance or repair projects are typically relatively narrow in depth and width would thus not normally provide a significant source area for dust to be generated and sustained. A dust monitoring program will not be implemented during underground utility maintenance or repair work.
- Dust-generating activities that occur for less than four weeks. The analysis from which the acceptable dust concentration was derived assumes that the exposure would occur continuously for 20 years. A four-week project represents less than 0.4 percent of this total assumed 20-year exposure period. Since it is unlikely that dust-generating activities

occurring for a period of less than four weeks will contribute significantly to an individual's total dust exposure during construction activities in the RMP Area, dust generating activities that occur for less than four weeks will not require any dust monitoring.

4.3.2.2 Part II: Dust Monitoring Program

The objective of the Dust Monitoring Program (the "Program") is to collect data that is reflective of the levels of dusts generated during construction activities so that additional dust suppression measures can be implemented, if necessary, to reduce potential impacts to nearby populations. The Program will consist of real-time monitoring for PM₁₀ concentrations, as discussed in the following sections. Except as exempted in Section 4.3.2.1 above, the Program must be implemented during the period when development of the Site will involve dust-generating activities. However, once the development of a Site reaches a point that dust-generating activities are no longer occurring, dust monitoring will not be necessary. Compliance with the Program will be the responsibility of the Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee). Construction personnel will be periodically briefed in the field about the substance of the Program and will inform the construction supervisor if the dust levels exceed the criteria.

4.3.2.2.1 Monitoring Equipment

Monitoring will be performed for PM₁₀ using a portable real-time dust monitor, such as a DataRAM or equivalent instrument. The monitor will have a minimum detection limit of no more than 100 µg/m³, a minimum accuracy of 1 µg/m³ or 1 percent, and should be calibrated to greater than 250 µg/m³. Calibration of the monitor will be based on the manufacturer's specifications.

4.3.2.2.2 Sampling Frequency

There are two options available for sampling frequency that meet the objectives of the Program. For Option One, sampling will occur during the first two days of a new operation involving dust-generating activities, as well as every day that a new dust-

generating activity occurs on the Site. Samples will be collected once per hour, for a duration of 10-15 minutes, by a site walker carrying the dust monitor. If the concentrations on-site never exceed $250 \mu\text{g}/\text{m}^3$ during these first two days, sampling will occur one day per week for the remainder of the dust-generating activity, unless the 10-minute average concentration exceeds $250 \mu\text{g}/\text{m}^3$ during one of the once-a-week sampling events. If the 10-minute average concentration exceeds $250 \mu\text{g}/\text{m}^3$ during one of the once-a-week sampling events, then sampling must occur daily or until two successive day sampling events occur with no exceedance of the $250 \mu\text{g}/\text{m}^3$ threshold.

For Option Two, sampling will occur continuously during any dust-generating activity. The dust monitor will be set up in one location, as discussed below. The monitor will be checked four times during the course of the day to ensure that concentrations are not exceeding an average of $250 \mu\text{g}/\text{m}^3$.

4.3.2.2.3 Sampling Locations

Samples will be collected as close to the center of the dust-generating activity as possible. In this way, samples will represent worst-case levels of dust to which the nearby populations could be exposed. Samples typically should be collected from an approximate height of five feet above the ground surface.

If sampling is occurring with a site walker (Option One), the walker should start as close to the dust-generating activity as possible. If the concentrations are approaching $250 \mu\text{g}/\text{m}^3$, the walker should move towards the downwind Site boundary and continue to take measurements without interfering with the construction activities. Factors that will be taken into account when selecting the walker's route and destination will include the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. A demonstration that the levels within or directly downwind of the dust-generating activities are below $250 \mu\text{g}/\text{m}^3$ is sufficient documentation that levels off-site are well below the threshold.

If sampling is occurring through the use of continuous monitoring (Option Two), the monitor should be stationed as close to the dust-generating activity as possible without interfering in the activity. When the monitor needs to be stationed at the edge of the dust-generating activity due to the nature of the dust-generating activity, the monitor

should be placed on the downwind side of the Site. Unless site-specific data to the contrary is available, downwind will be to the east-southeast of the dust generating activity (consistent with the information used in FSEIR). As with Option One, other factors should also be taken into account when locating the monitor, including the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. It should be noted that during the course of the day, it may be necessary to relocate the dust monitor as any of these Site conditions change. A demonstration that the levels within or directly downwind of the dust-generating activities are below $250 \mu\text{g}/\text{m}^3$ is sufficient documentation that levels off-site are well below the threshold.

4.3.2.2.4 Recording of Quantitative Measurements

All PM_{10} data should be logged with a data recorder, downloaded from the DataRAM or equivalent instrument, and attached to the field logbook. Notes regarding the location of the monitors, the dust generating activities, and the nearby populations should also be recorded in the field logbook. In addition, any recommended mitigation and follow-up measurements will also be recorded.

4.3.2.2.5 Sampling Personnel

The sampling personnel should be selected at the initiation of the project, along with a backup person, in case the first person is absent. The individual conducting the sampling should be an individual experienced with the operation and handling of the sampling equipment to be used.

4.3.2.2.6 Criteria for Emissions Mitigation Activities

If the on-site, day-long average concentrations exceed $250 \mu\text{g}/\text{m}^3$, additional dust suppression measures as discussed in Section 4.3.1 shall be implemented for the next day, assuming the dust-generating activity continues to occur. Furthermore, additional dust suppression measures should be implemented if visible dust plumes are seen crossing the site boundary, regardless of the measured PM_{10} concentrations.

4.3.2.2.7 Reporting Requirements

If the on-site, day long average concentrations exceed $250 \mu\text{g}/\text{m}^3$, the RWQCB and the SFDPH will be notified by telephone as soon as practicable. A brief letter report describing the exceedance, and the response undertaken by the contractor to achieve compliance will be submitted to the RWQCB and the SFDPH within 5 business days after the exceedance.

4.3.3 Control of Off-Site Runoff

To minimize risks associated with storm water runoff during construction, Storm Water Pollution Prevention Plans (SWPPP) that meet the objectives of the San Francisco RWQCB will be developed by the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) which undertakes construction activities in the RMP Area. Preparation and implementation of a SWPPP is required regardless of whether any chemicals are present in the soil. A primary goal of the SWPPP is to reduce or eliminate off-site discharge of sediments and other pollutants during construction activities. If these procedures are implemented, then potential releases of chemicals in the soils will also be controlled. The SWPPPs will be prepared in accordance with SWRCB Order No. 92-08 DWQ (the "General Permit") and guidelines contained in the following documents: *"Information on Erosion and Sediment Controls for construction Projects: A Guidebook (RWQCB 1998a)* or later edition; and *"Erosion and Sediment Control Field Manual"* second or later edition (RWQCB, 1998b), or succeeding regulatory guidance documents. The provisions of the General Permit require the implementation of Best Management Practices ("BMPs") to control and abate the discharge of sediments, the monitoring of the BMPs to verify their effectiveness in controlling discharges, and revising the BMPs, if necessary.

For the RMP Area, the SWPPP development will be divided into two sequential phases: 1) the development of a "Conceptual SWPPP" that covers the entire Mission Bay RMP Area; and 2) the development of site-specific SWPPPs prepared for each applicable individual construction project. A brief description of each of the two phases is provided below.

Phase 1: Conceptual SWPPP for Mission Bay RMP Area

The Conceptual SWPPP prepared for the entire RMP Area is to be submitted to the RWQCB within 120 days after approval of the RMP. The general process for preparing the Conceptual SWPPP is described in Chart I-1 of Appendix I. As indicated in Chart I-1, the Conceptual SWPPP will consider the proposed outline presented in Table I-1 (in Appendix I), and will include those general elements that are practicable to include during the conceptual phase and that are not dependent on the specific details of the construction activities which will not be known until later. The Conceptual SWPPP will also address the pollution prevention measures for dry and wet months from construction related activities.

The initial step in the development of the Conceptual SWPPP is to define the organizational structure for the site-specific SWPPPs' Pollution Prevention Teams (PPTs) that will be responsible for preparing, implementing, and monitoring compliance with each of the site-specific SWPPPs. The Conceptual SWPPP will identify the essential roles of these PPTs and will describe the responsibilities each team will have in implementing, monitoring and enforcing its own site-specific SWPPP. Additionally, the training requirements for the members of each site-specific SWPPPs' PPT will be described in the Conceptual SWPPP.

Phase 2: Site-Specific SWPPPs

Following development of the Conceptual SWPPP, site-specific SWPPPs will be prepared as individual parcels in the RMP Area are developed. The overall process for preparing the site-specific SWPPP is described in Chart I-2 of Appendix I. The site-specific SWPPP will follow the proposed outline in Table I-1. A site-specific SWPPP must be developed by the Owner or the Lessee which undertakes the construction activities (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) for each construction project in the RMP Area greater than one acre in size, if the construction activities will involve soil disturbance as defined in 40 CFR Parts 122-124 and State Water Resources Control Board (SWRCB) Order 92-08 DWQ. As indicated in Chart I-2, the site-specific SWPPPs will largely follow the Conceptual SWPPP, but will include additional site-specific pollution prevention procedures and specific inspection, monitoring and record keeping procedures for the given construction activities at that particular development area. Site inspections, to determine the effectiveness of the BMPs and identify repair needs, will be conducted routinely during the dry months and more frequently during the wet months. In conformance with the Conceptual

SWPPP, the site-specific SWPPP will identify the name, organization and phone numbers of the Pollution Prevention Team members who are responsible for preparing, implementing, monitoring compliance, enforcing, and revising the site-specific SWPPP, if necessary. The site-specific SWPPP will include requirements that those with inspection responsibilities are qualified and/or trained in the field of erosion and sediment control practices and are familiar with the storm water pollution control rules and regulations.

Compliance with the site-specific SWPPP is the responsibility of the Owner or the Lessee which undertakes the construction activities (or other entity, such as a contractor who is knowledgeable in erosion and sediment control, designated or certified by the Owner or Lessee).

The SWPPPs will identify, at a minimum, the following BMPs², or substantially equivalent measures as described in detail in the above references (ABAG 1995 and RWQCB 1998b).

- Minimize dust during demolition, grading, and construction by lightly spraying exposed soil on a regular basis.
- Minimize wind and water erosion on temporary soil stockpiles by spraying with water during dry weather and covering with plastic sheeting or other similar material during the rainy season (October through April).
- Minimize the area and length of time during which the site is cleared and graded.
- Prevent the release of construction pollutants such as cement, mortar, paints, solvents, fuel and lubricating oils, pesticides, and herbicides by storing such materials in a bermed, or otherwise secured area.
- As needed, install filter fences around the perimeter of the construction site to prevent off-site sediment discharge. Prior to grading the bank slopes of China Basin Channel for the proposed channel-edge treatments, install silt or filter fences to slow water and remove sediment. As needed, properly trench and anchor the silt or filter fences so that they stand up to the forces of tidal fluctuation and wave action and do not allow sediment-laden water to escape underneath them.

² These nine BMPs are requirements set forth in the FSEIR.

- Follow design and construction standards found in *The Manual of Standards for Erosion and Sediment Control Measures* (ABAG 1995) for the placement of riprap and stone size.
- Install and maintain sediment and oil and grease traps in local stormwater intakes during the construction period, or otherwise properly control oil and grease discharges.
- Clean wheels and cover loads of trucks carrying excavated soils before they leave the construction site.
- Implement a hazardous material spill prevention, control, and cleanup program for the construction period. As needed, the program would include measures such as constructing swales and barriers that would direct any potential spills away from the Channel and the Bay and into containment basins to prevent the movement of any materials from the construction site into water.

Additional BMPs that may be included in the SWPPPs include the following:

- Stabilize all banks during rainy months using Interim or Permanent BMPs (e.g., an erosion control blanket).
- All construction entrances and exit points will be stabilized per RWQCB Erosion Control Field Manual to minimize tracking of mud outside the parcel boundaries.

4.3.4 Methods to Minimize the Potential for Creating Conduits

Utility trenches will be constructed within the RMP Area for the installation of underground utilities along alignments in the streets and on individual parcels. The trench depths could vary from approximately two to ten feet below ground surface (bgs). In general, the depth to ground water in the RMP Area is between two to ten feet bgs. If the trenches extend into the ground water, then the presence of such trenches could create a horizontal conduit for ground water flow and migration of chemicals. The management measures that will be implemented to minimize the potential for creating horizontal conduits include the following:

- Material that is less permeable than the surrounding soil will be placed through a variety of methods at 300-foot intervals and at the RMP Area boundaries along the trench to disrupt the flow within the trench backfill. One method during initial trench backfilling is the construction of a short section backfilled with a concrete or cement and bentonite mixture. Another method is the creation of a clay plug by compacting clay around the pipe for about a five-foot section of trench. A third method is the installation of barrier collars around the pipes by forming and pouring concrete in place. The appropriate method will be determined by a qualified environmental professional.

The ground water monitoring data collected to date have identified only one “plume” area (i.e., the Free Product Area) where the preferential ground water flow through the trenches could result in the migration of chemicals to nonimpacted areas. Nevertheless, to assure control of chemicals by way of preferential horizontal ground water flow, one or more of the management measures identified above will be incorporated by the contractor as standard trench construction protocol wherever the trenches in the RMP Area extend below the surface of the ground water, unless a qualified environmental professional determines that the ground water conditions do not warrant such measures.

4.3.5 Soil Management Protocols During Site Development

The following section presents the management protocols for handling, moving, stockpiling, and reusing soils during the development of the RMP Area and delineates the contingency protocols to be followed when unknown contamination or underground structures are identified.

4.3.5.1 Measures to Minimize Dust and Erosion from Soil Movement and Handling

Throughout the development of the RMP Area, soil may be handled and moved from one portion of the Project Area to another location (See Appendix D: Soil Reuse Within the Mission Bay Area). Impacts from soil movement can result from exposures to dusts generated during the soil handling and movement, and from exposures to soils that have

been transported outside of the development area either with a truck or through off-site runoff.

Potential impacts associated with the handling and movement of Native Soils will be addressed through the implementation of the dust control plan (see Section 4.3.1), and the SWPPP. The dust control measures are described in Section 4.3.1, and the requirements of the SWPPP are described in Section 4.3.3.

4.3.5.2 Management of Soil Stockpiles

Soil which is excavated within the RMP Area may need to be stockpiled before it is re-used. There are three potential concerns associated with the stockpiling of soils: dust generation, erosion, and unauthorized access to the stockpiles. The risk management measures that will be implemented to control each of these impacts are described below. The management measures described below apply to soil stockpiles that are in place for a period of greater than 30 days.

4.3.5.2.1 Risk Management Guidelines to Control Dust from Soil Stockpiles

As previously described in Section 4.3.1.1, the performance standard applicable to all stockpiled soils is to prevent visible dust plumes from migrating outside the parcel boundary. Water will be used to mitigate dust generation during the creation, movement, or use of the soil stockpiles. Over-watering, which could result in excessive runoff, will be avoided. Dust palliatives or other methods of dust control may be used if water proves to be inadequate.

While stockpiles are in place, dust will be controlled either through the use of a cover, or an alternative method that provides equivalent protection. If the stockpiles are covered, the cover will consist of either anchored plastic sheeting, hydroseeding (spraying a mixture of grass seed and mulch to create a vegetative cap), or an equivalent cover. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. If, however, stockpiles are to be in place and unused for one year or greater, then the stockpile will be covered with either hydroseeding or an equivalent cover.

4.3.5.2.2 Risk Management Guidelines to Control Erosion from Stockpiles

If soil stockpiles are to be in place during the rainy season (generally October through April), they will be covered with anchored plastic sheeting, hydroseeding, or an equivalent cover to minimize erosion of the soil. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. As described above, if stockpiles are to be in place and unused for one year or greater, the stockpile will be covered with either hydroseeding or an equivalent cover. Stockpiles that are placed within the boundaries of an active construction parcel greater than one-acre in size will not require additional erosion control measures, because the SWPPP will contain specific provisions to prevent off-site sediment discharges. As previously described in Section 4.3.3, the SWPPP may require that filter fences (or equivalent BMPs) be installed around the perimeter of the construction site to prevent off-site sediment discharge, if necessary. Filter fences (or equivalent BMPs) would likewise capture any sediments that may erode from the covered stockpile in place during the rainy season. The sediment traps that will be placed at the local stormwater intakes will also prevent sediments, including those that may result from erosion of the stockpiles, from entering the City's storm water system. Further details of storm water management will be included in the SWPPP (described in Section 4.3.3).

If, however, soil stockpiles are to be placed outside of the boundaries of a one acre active construction site, then additional erosion control measures may be appropriate, particularly if the stockpiles will be in place during the rainy season. To further prevent stockpile erosion, a silt fence constructed of geotextile fabric and hay bales (or other appropriate BMPs) will be constructed around all stockpiles that are placed outside of a construction site and that will exist for a period of greater than six months. Such fencing shall be placed so as to be able to encompass within the fenced area the volume of soil stockpiled.

4.3.5.2.3 Risk Management Guidelines to Control Access to Stockpiles

Access to all stockpiles located within the boundaries of an active construction site will be controlled by six-foot chain link fences or equivalent with lockable gates or, in a street, other appropriate barrier that will limit unauthorized access to the construction site (see Section 4.3.6). Additionally, warning signs will be posted on the fences to inform visitors that access is prohibited. Access to any stockpiles located outside of an active construction site will be restricted by placing fences with locked gates around the stockpiles and placing appropriate warning signs on the fences and gates.

4.3.5.2.4 Inspections of Soil Stockpiles

The Owner (or some other entity, such as a contractor, designated or certified by the Owner) shall conduct quarterly inspections of the soil stockpiles to ensure the integrity of covers, berms, and silt fences (as applicable), and to verify that the fencing is in place and that gates are locked and that the warning signs are visible. In the case of washouts of soil, the soil will be replaced to the stockpile and the area will be seeded or otherwise appropriately covered. In cases where anchored plastic sheeting is present, visible rips longer than six inches and wider than 1/4-inch will be sealed with membrane patches or replaced. The results of the quarterly inspections and a description of any material repairs undertaken will be reported to the RWQCB and the SFPDH by January 31 of each year. The RWQCB will be notified when the soil stockpiles have been fully removed.

4.3.5.3 Reuse of Native Soil within the RMP Area

The DTSC and RWQCB have determined that the soil within the RMP Area may be moved around, managed and reused within the RMP Area without triggering hazardous waste regulatory requirements, provided that the reuse is conducted in accordance with an RMP that specifies the soil management procedures. The soil management procedures are described in Section 4.3.5. Soil that is excavated and remains within the RMP Area will be placed under buildings or other covered areas such as streets, sidewalks, parking lots, roads or landscaping as described below under Section 4.3.5.5; provided, however, that before any soil removed from portions of the RMP Area currently designated for commercial use is placed as fill in any portion of the RMP Area designated for residential

use, the Owner will determine that the placement of such soil in the residential area is consistent with the human health risk Site Specific Target Levels (SSTLs) as established and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). Native Soil will not be used in the RMP Area in any manner other than described in this Section 4.3.5.3, unless the owner submits to the RWQCB supporting documentation and obtains written approval from the RWQCB.

4.3.5.4 Soil Disposal

Many of the projected construction activities in the RMP Area will require limited excavation of Native Soil to construct building pilings, elevator shafts, and other facilities. Other construction activities will require soil to be added for grading. The net balance of soil in the RMP Area is likely to be such that most excavated soil will be used for grading within the RMP Area. Based on this condition, off-site soil disposal is likely to be limited. Any soil disposed of off-site is subject to all applicable federal and state laws and regulations.

The nature of much of the Native Soil in the RMP Area is historic fill which includes construction debris, rock, glass, wood, bricks, bay mud and may contain other debris, such as pieces of metal. For use of the soil as fill material it may be necessary to remove material greater than four inches in diameter. Material not suitable for use as fill will be profiled and disposed of in accordance with all applicable laws and regulations.

4.3.5.5 Soil for Landscaped Areas

This Section 4.3.5.5 applies to landscaped areas accessible for human use. This section does not apply to landscaped areas (such as grassy swales) enclosed with fencing, covered with grates, or similarly protected to effectively prevent human access.

Materials that will be used for landscaped areas will consist of imported materials whose composition is sand, topsoil or fill that meets the prevailing commercial standards for fill used in commercial developments, or onsite material (such as Native Soil) that has been approved by the RWQCB ("Fill") in accordance with Section 4.3.5.3. The minimum depth of Fill that will be required for the landscaped areas will be between 1.0 and 1.5 feet. This depth of Fill is selected because generally accepted risk assessment protocols

assume individuals with access to surface soils may be exposed to the top 1.0 to 1.5 feet of soil. Before any Fill (including in the tree wells) is placed on top of the Native Soils in the landscaped areas, a water permeable synthetic netting fabric will be placed on top of the Native Soils, and the Fill will be placed on top of this fabric. The purpose of this fabric is as a “marker” to assist in identifying whether erosion of the Fill down to the level of the Native Soils has occurred. Irrigation systems, (defined as that portion of the system between the valve and the sprinkler head) in the landscaped areas are to be placed in Fill. The fabric will be in color other than brown or black, and will have a minimum tensile strength of 50 lbs/foot.

4.3.5.6 Contingency Protocols for Identifying Unknown Areas of Contamination and/or Unknown Underground Structures

The protocols to be followed in the event that unknown areas of contamination and/or underground structures are identified during site development are described in this section. These protocols will be conducted by the Owner, Lessee, or some other entity, such as a contractor or qualified consultant, designated or certified by the Owner or Lessee.

4.3.5.6.1 Procedures for Discovery of Unknown Areas of Contamination

Site development activities may result in the identification of previously unknown areas or types of contamination. The Soil Analysis Report, prepared per the requirements described in Appendix F and described further in Section 4.3.11, will summarize the results of the analytic testing that have been conducted on the parcel prior to Site development activities. A review of the Soil Analysis Report will allow the contractor to know the types of compounds which were previously discovered on the parcel, the magnitude of the detections, and the specific locations where they were discovered. This information, and other information in the RMP Area, will guide the contractor in determining whether an encountered environmental condition is unknown and therefore will trigger contingency monitoring, as described in the succeeding paragraphs below.

Unknown conditions which may trigger contingency monitoring procedures during site development include, but are not limited to, the following:

- oily, shiny, or saturated soil or Free Product in previously undocumented areas;
- soil with a significant chemical or hydrocarbon-like odor in previously undocumented areas;
- significantly discolored soil that reasonably indicates a concentrated source of metals within the RMP Area other than metals naturally occurring or otherwise known to be present in the Native Soils.

Upon the discovery of one of the conditions identified above, and if the conditions on the parcel vary materially from those previously documented in the RMP Area such that they could require either alternative or additional RMP measures to protect human health or additional calculations and assessments to confirm that the existing RMP measures will be sufficiently protective, the contractor will conduct the contingency monitoring.

Contingency monitoring, if conducted, will consist of the following steps: If unknown areas of potential concentrated metals are encountered, additional analyses should be conducted for the suspected constituents to assess the potential leachability of the metals, or the RWQCB should be contacted for assistance in determining if additional sampling and potential mitigation is necessary. If the encountered materials are suspected to be volatiles, the following contingency monitoring procedures may be followed:

- i) Conduct contingency monitoring by taking organic vapor readings using an organic vapor meter (OVM) or an organic vapor analyzer (OVA) to screen for the presence of fuel, oil, or solvents. If the OVM/OVA indicates that an unknown area of fuel, oil, or solvents has been detected, then the RWQCB will be notified to determine if additional sampling is appropriate prior to continuing construction in that area. Such additional characterization will not be required if the RWQCB concurs that the risk management measures currently specified in this RMP already mitigate the risk of the chemicals detected in this area. OVM or equivalent screening methods will be conducted by experienced personnel only.

- ii) If an unknown area of fuel, oil or solvents has been identified, and the RWQCB has requested additional characterization, the following steps will be taken:
 - a) Samples will be collected from the identified area and analyzed for volatiles and/or TPH compounds, depending on the suspected type of contamination. The sampling strategy will be discussed with the RWQCB prior to the initiation of the sampling activities. Analytical results collected from the suspected source will be compared to the health-based site-specific target levels (SSTLs) developed and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). If the levels are below the relevant health-based SSTLs, and the RWQCB concludes that the potential for ecological impacts is insignificant and does not require mitigation, then soil removal activities will not be required and the soil may be temporarily stored elsewhere pending reuse in the RMP Area. All soils will be contained during transport within the RMP Area so as to minimize the potential for spillage.
 - b) If the soil contains volatiles or petroleum constituents at levels that exceed the relevant health-based SSTLs, or if the RWQCB concludes that the potential for ecological impacts requires mitigation, then management measures, such as the following, will be undertaken:
 - 1. remove soil and dispose of off-site;
 - 2. install physical barrier, such as a vapor barrier or passive venting system, to prevent the accumulation of vapors in indoor environment;
 - 3. stockpile soil and aerate onsite, or in a staging area as may be appropriate, in compliance with all applicable laws and regulations;
 - 4. conduct *in situ* bioremediation measures;
 - 5. implement liquid or vapor extraction measures.

The appropriateness of one of the above management measures over another will depend on many factors, such as the type of constituent detected, the size of the identified impacted area, and the estimated cost of implementing the remedy.

- c) If Free Product is encountered, its areal extent and thickness will be characterized. The RWQCB will determine the appropriate response to the Free Product based on recommendations from the Owner or Lessee (or some other entity such as a contractor or qualified environmental consultant designated by the Owner or Lessee).
- d) The Owner or Lessee (or some other entity such as a contractor or qualified consultant designated by the Owner or Lessee) shall report the results of the sampling activities and the proposed course of action (e.g., no action necessary, soil excavation and off-site disposal, on-site treatment and soil reuse) to the RWQCB and obtain concurrence before implementing the remedial measures. Notification of the proposed action will also be provided to SFDPH. Construction activities in the specific area where the unknown conditions were identified will resume following the completion of the additional sampling activities and the implementation of any required responses.

4.3.5.6.2 Requirements for Underground Structures

During the course of excavation and construction activities within the RMP Area, it is possible that underground storage tanks (UST), sumps, maintenance pits for rail cars or other underground structures that were not discovered during previous site searches will be discovered. For example, USTs may be identified during grading and site excavation activities by the presence of vent pipes that extend above the ground surface, product distribution piping that leads to the UST, fill pipes, back fill materials and the UST itself. Other structures might not have any features that extend above the surface, and could be

unearthed when construction equipment comes into contact with them. As described below under Section 4.3.8.1, Environmental Health and Safety Guidelines, the on-site Health and Safety Officer will conduct periodic briefing meetings with all construction personnel on the procedures and reporting requirements to be undertaken when underground structures are identified. The following section outlines the measures that govern identification and removal of UST, and appropriate measures for addressing other underground structures identified during development.

4.3.5.6.2.1 Removal Requirements for Underground Storage Tanks

Chapter 6.7 of the California Health and Safety Code contains the specific requirements for removing and remediating contamination associated with a leaking UST. While the City of San Francisco's Local Oversight Program (LOP) is responsible for overseeing the removal of any UST, the RWQCB will maintain responsibility for overseeing environmental investigations and responses arising from releases from any UST in the RMP Area. Accordingly, in the event that a UST or appurtenant piping is discovered during construction and development of the RMP Area, then the RWQCB will be notified. Environmental investigations and responses required following removal of the UST will be conducted under the direction of the RWQCB and in accordance with the specific provisions delineated in Chapter 6.7 of the Health and Safety Code.

4.3.5.6.2.2 Procedures Governing the Identification, Investigation and Potential Removal of Other Subsurface Structures

For other subsurface structures that may have been related to former use and storage of chemicals, such as underground vaults and sumps, the following procedures should be followed to determine the proper disposition of the encountered structure.

- i) The structure should be inspected to assess whether it contains any indication of chemical residuals or free liquids other than water. This determination will be made with field observations by the Owner or Lessee's designated environmental engineer relying on visual observations, detection of chemical odors, and the results of vapor monitoring using a field OVM/OVA (as described above). If

there is no indication based on visual, odor, or OVM/OVA readings, that chemicals are or were present within the vault or sump, then removal of the structure is not necessary for environmental reasons.

ii) If a sump or vault contains liquids that appear, based on field observations (visual, odor, or OVM/OVA readings) to be chemical-containing, then the following steps shall be undertaken:

a) Characterize the chemical-containing liquids and/or soils, and determine the appropriate response action. Chemical-containing liquids are to be sampled for profiling purposes then properly removed and disposed under the direction of the Owner or Lessee's designated environmental engineer. The RWQCB would be notified prior to the selection of an appropriate response.

Chemical-containing soils are to be characterized as described above under 4.3.5.6.1. The procedures used to determine the appropriate action for the soils are identical to those described above in 4.3.5.6.1.

b) Inspect the sump or vault for cracks and holes once the liquids and/or chemical-containing soils are removed.

1) If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that the structure of the sump or vault is intact, and that subsurface releases of the chemicals to the underlying soils did not likely occur, then removal of the sump or vault is not required for environmental reasons.

2) If the physical inspection of the vault or sump suggests that chemicals may have been released to the underlying soils, then:

A) Conduct additional environmental investigations of the underlying soils to determine whether a release, sufficient to warrant removal, has occurred. If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that a release, sufficient to warrant removal, has not occurred, then removal of the sump or vault is not required for environmental measures; or

B) Remove the sump or vault under the guidance of the Owner or Lessee's designated environmental engineer. Response to the chemicals in the soils underlying the sump or vault, if necessary, will be consistent with the procedures described above in Section 4.3.5.6.1.

4.3.6 Access Control During Construction

The potential for trespassers or visitors to gain access to construction areas and come into direct contact with potentially contaminated soils or ground water will be controlled through the implementation of the following access and perimeter security measures:

- Except in streets, fence construction site to prevent pedestrian/vehicular entry except at controlled (gated) points. Gates will be closed and locked during non-construction hours. Fencing will consist of a six foot chain link or equivalent fence unless particular safety considerations warrant the use of a higher fence.
- In streets, use a combination of K-rails or similar barriers and fences with locked gates.
- Post "No Trespassing" signs every 250 feet.

Implementation of appropriate site-specific measures as outlined above would reduce the potential for trespassers or visitors to access construction areas and to come into direct contact with soil or ground water. The access control measures will be detailed in the Environmental

Health and Safety Plan (EHASP) (see Section 4.3.8) that will be developed prior to the initiation of construction activities. Compliance with the specific access control measures is the responsibility of the Owner or Lessee (or other entity, such as a contractor designated or certified by the Owner or Lessee).

4.3.7 Protocols for Dewatering Activities

Dewatering could be initiated within the RMP Area to facilitate excavation and subsurface construction work, such as the installation of foundations, to proceed without the constraint of working in wet conditions. Uncontrolled and extensive dewatering could adversely impact ground water by drawing ground water that contains chemicals toward the dewatered area thus causing those areas to be degraded with chemicals. If it is determined that building construction necessitates the use of dewatering methods, and the dewatering activities are to occur in or around a known area of contamination (e.g., the Free Product Area) the following risk management measures will be implemented to minimize potential impacts:

- Conduct preliminary estimates of the amount of water that will need to be removed for the specific construction activity.
- Based on the location of the proposed dewatering, determine whether the volume of water that would need to be removed would result in the enlargement of an existing ground water plume, if present, or significant alterations in the ground water flow patterns in the RMP Area.
- If the estimates of the volume and location of the ground water dewatering suggest that such activities are not likely to result in the enlargement of a ground water plume, or significant alterations in the flow patterns, then simple dewatering methods, such as the those employed through the use of a sump pump, would be implemented. These simple methods would be sufficient to prevent ground water from accumulating in an open excavation or trench.

- If, based on the opinion of the Owner or Lessee's qualified environmental engineer, dewatering is likely to result in the enlargement of an existing ground water plume or result in significant alterations in ground water flow, such as could occur in the Free Product Area, then other engineering techniques will be employed to minimize the potential dewatering impacts. One engineering technique that could be employed involves the installation of sheetpiles. In this example, the excavations will first be ringed with sheetpiles. With proper installation, sheet piles limit the volume of water entering the excavation and thus limit the dewatering operation's effect on surrounding ground water flow paths. Dewatering pumps installed inside the area surrounded by sheetpiles will lower the ground water level. Properly installed sheet piles that are interlocked and driven through dense clay materials will effectively limit ground water flow through the piles and minimize the volume of water being pumped. The appropriateness of one engineering technique over another will depend on the construction specifications and other site-specific factors and will be determined by the Owner or Lessee's qualified environmental engineer on a site-by-site basis.
- All water removed during dewatering activities will be discharged in accordance with appropriate permits from the City . It is anticipated that ground water removed during dewatering activities would be discharged into the City's sewer system. Discharge of ground water into the City's sewer system would be conducted in compliance with a discharge permit issued by the San Francisco Department of Public Works (SFDPW) or the Public Utilities Commission. If direct discharge to the surface water is determined to be the appropriate method for disposal of ground water removed during dewatering, permits issued by the RWQCB under the National Pollution Discharge Elimination System would be required. Compliance with the provisions of the discharge permit is the responsibility of the Owner or Lessee (or other entity such as a contractor or qualified environmental consultant designated or certified by the Owner or Lessee). Alternatively, it may be desirable to use the water generated during dewatering activities to control dust. If the shallow ground water is to be used for

this purpose, the Owner or Lessee will obtain advanced approval from the RWQCB on a parcel-by-parcel basis.

4.3.8 Construction Worker Management Measures

During construction activities, workers that may directly contact the Native Soil and/or the ground water will conduct the work in accordance with California Occupational Safety and Health Administration (Cal/OSHA) training and worker protection rules and regulations. The types of hazards that construction workers, or other workers involved in soil disruptive activities, are most likely to encounter include identifying previously unknown structures or areas of contamination, and having direct contact with fill materials that contain inorganic constituents and petroleum compounds and ground water that contains limited quantities of inorganics and petroleum products. Cal/OSHA is the state agency that is responsible for monitoring compliance with worker health and safety laws and requirements. Compliance with standard Cal/OSHA regulations, particularly Title 8, Chapter 4, "Division of Industrial Safety", will minimize the potential impacts associated with excavation activities, as the intent of these standards is to prepare workers for the types of hazards that are likely to be encountered during such activities. All activities conducted within the RMP Area must be in compliance with current Cal/OSHA rules and regulations, even if not expressly noted in this RMP. Further, all workers involved in subsurface activities must conduct the work in compliance with an Environmental Health and Safety Plan (EHASP). The EHASP will be an additional mechanism that will protect workers engaging in intrusive work. To achieve that goal, the EHASP will delineate the specific potential hazards associated with contact with Native Soils or ground water on the parcel under development, will specify to all workers that the fill material is likely to contain inorganic constituents, petroleum compounds and, on a parcel-by-parcel basis, other constituents, and will define the methods to be employed to minimize the hazards associated with such activities.

The minimum health and safety guidelines for all intrusive workers within the RMP Area, and a discussion of the components of the environmental health and safety plans, are provided below. Compliance with all aspects of the EHASP is the responsibility of the individuals engaged in the intrusive activities. An EHASP that meets the requirements specified in Section 4.3.8.2 will not require any further environmental approvals by any city agency, or any state agency which participated in the designation of the RWQCB as the Administering

Agency for the RMP Area under Chapter 6.65 of the California Health and Safety Code. EHASPs prepared for any construction projects will be submitted to the RWQCB as soon as reasonably practicable prior to the initiation of construction. Nothing in this RMP requires that construction workers working in the RMP Area comply with Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, unless such workers are required to comply with those requirements under Cal/OSHA rules and regulations.

4.3.8.1 Environmental Health and Safety Guidelines

While this RMP establishes the minimum requirements for an EHASP, the EHASP is a stand alone document developed by the Owner or Lessee's designated contractor or qualified environmental consultant prior to the initiation of any construction activities that would disrupt the Native Soils. It is the responsibility of the individual preparing the EHASP to verify that the components of the EHASP are consistent with current worker health and safety rules and regulations. All workers, including utility repair workers or other workers who may directly contact Native Soil or the ground water, would perform all activities in accordance with an EHASP. Consistent with the Cal/OSHA standards, an EHASP would not be required for workers such as carpenters, painters or others, who would not be performing activities that disrupt the Native Soils.

The EHASP will be designed to identify, evaluate and control safety and health with respect to the chemicals present in the soil and ground water. The EHASP will require that the on-site Health and Safety Officer conduct periodic briefing meetings (tailgate meetings) with construction personnel on the reporting requirements to be undertaken when underground structures are identified. Compliance with all aspects of the EHASP is the responsibility of the party conducting the construction activities.

4.3.8.2 Components of the Environmental Health and Safety Plans

The objectives of the EHASP are 1) to identify, evaluate and control site health and safety hazards related to the Native Soils or ground water, thereby helping to ensure the health and safety of all field personnel involved in the development activities on-site; and 2) to inform all contractors and subcontractors of the known chemical conditions present at the site so they are able to make prudent health and safety decisions related to soils and

ground water that will protect the health of the workers and the surrounding community throughout the development of the site.

The following section presents the minimum requirements for all EHASP's that will be prepared prior to construction.

General Information

This section of the EHASP will contain general information about the site, including the location of the site, the objectives of the work that the EHASP is intended to cover, and the name of the individual(s) who prepared the EHASP. This section will also contain a brief summary of the possible hazards associated with the soil and ground water conditions at the site. Based on the known conditions in the RMP Area, the principal hazards posed by the soils and ground water that construction workers will encounter will be direct contact with the inorganics present in the Native Soils and ground water.

Key Personnel/Health and Safety Responsibilities

This section of the EHASP will identify the key personnel by name, and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the site. All workers at a given parcel who will potentially contact Native Soils or ground water will be provided a copy of the EHASP and briefed as to its contents. The health and safety responsibilities of each individual will be described in this section of the EHASP.

Facility/Site Background

Background information is provided in this section of the EHASP concerning past operations, the types of contaminants that may be encountered, and a brief description of the types of construction activities that will be conducted at the site. The description of the construction activities will focus on those activities that will result in the movement of Native Soils, and/or the potential for workers to have direct contact with the soil or the ground water. This section will provide a general map indicating the location of the site under construction, highlighting those particular areas where soil movement activities or direct contact with ground water may occur. The types of contaminants that may be

encountered during the construction activities that will be clearly identified in the EHASP include the following: inorganics (including metals and asbestos), petroleum hydrocarbons, and potentially low levels of volatiles (including methane) and semivolatiles.

Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with Native Soils or ground water is presented in this section of the EHASP. The hazards that will be discussed include, at a minimum, chemical, temperature and explosion hazards, if applicable. As part of the job hazard analysis, the EHASP will identify the chemicals likely to be encountered during the construction activities, and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit (PEL)). The procedures to mitigate the hazards identified in the job hazard analysis are also presented in this section of the EHASP. The principal measure that will mitigate the hazards associated with chemicals present in soil and ground water will be the use of appropriate Personal Protective Equipment (PPE).

Air Monitoring Procedures

The air monitoring procedures will be detailed in the EHASP. The air monitoring that will be conducted during the site construction activities includes monitoring for both volatile constituents and respirable dust. The objectives and monitoring protocols for each are described below.

Air Monitoring for Volatiles

Air monitoring for volatile constituents will be conducted in the event that unknown areas of contamination are identified during the construction activities. The purpose of the air monitoring as described in the EHASP is to verify that the workers are not exposed to levels of volatiles that exceed the Cal/OSHA PELs, the relevant exposure standards for workers. The presence of those constituents with the lowest OSHA PELs will dictate the level of PPE that will be required. Of the volatiles that are likely to be

present within the RMP Area, the chemical with the lowest OSHA PEL is benzene, with a PEL of 1 ppm.

If previously unknown areas of contamination are identified, real time air monitoring for volatiles will be conducted using an OVM/OVA. Monitoring will be conducted within the breathing zone of the workers. Sustained 5-minute readings in the worker's breathing zone in excess of 1 ppm will require additional sampling methods to determine whether any of the chemicals with OSHA PELs of 1 ppm are present in the breathing zone. The most common chemical-specific monitoring instrument that provides real-time data is the Draeger Tube. Draeger tubes for benzene, and a few of the chlorinated solvents that also have OSHA PELs of 1 ppm (i.e., 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,2,2-tetrachloroethane, and vinyl chloride) may be used to measure the concentration of vapors in the worker's breathing zone if the sustained 5-minute readings using the OVM/OVA exceed 1 ppm above background.

The table below summarizes the protocols in effect as of 1999 for conducting the volatile monitoring, including the instrument, the frequency and duration of the air monitoring, the specific actions levels and the mitigation measures that should be taken in the event that the trigger levels are reached. All of these actions are based on protecting the health of the workers involved in the construction activities. It is the responsibility of the individual preparing the EHASP to verify that the air monitoring protocols and action levels are consistent with current worker health and safety rules and regulations.

Real-Time Air Monitoring for Volatiles

Instrument	Calibration Gas Standard	Frequency/Duration of Air Monitoring	Action Level Above Background	Action ^a
OVM/OVA Calibrated daily	100 ppm isobutylene	5 minutes	For unknown constituents:	
			< 1 ppm	Work Proceeds in Level D
			1 – 5 ppm	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 5 ppm	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action
Draeger Tube for Benzene, 1,2-DCA, tetrachloroethane, vinyl chloride, and 1,1-DCE	none required	Immediately following OVM/OVA reading above background in breathing zone	For known constituents:	
			< OSHA PEL	Work Proceeds in Level D
			> OSHA PEL	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 10 times OSHA PEL	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action

^a Levels of Personal Protective Equipment, identified as Level D and Level C, are described in the following section.

Air Monitoring for Particulates

As described in Section 4.3.2.2, air monitoring for particulates will be conducted to demonstrate that the health and safety of the off-site populations is not being impacted by the development/construction activities. Dust monitoring, where appropriate, will verify that concentrations of PM₁₀ at the site boundary do not exceed 250 µg/m³.

Additional dust monitoring to verify that the workers are not exposed to nonvolatile constituents at levels greater than the chemical-specific OSHA PELs for nonvolatiles is not warranted³. If significant levels of asbestos from the serpentinite-rock in the Native Soils are likely to be disturbed during the construction activities, or if other suspect material is unearthed during construction, such as pipe insulation material, then personal monitoring for asbestos may be appropriate. In that circumstance, a determination as to whether personal monitoring for asbestos is warranted will be based on the conditions specific to the parcel being developed.

Personal Protective Equipment

This section of the EHASP will identify the appropriate required PPE that will adequately protect the workers from the hazards related to contact with Native Soils or ground water that are expected to be encountered at the site. Personal Protective Equipment is selected based on the known contaminants present at a site, and the known route(s) of entry into the human body. The primary constituents present within the RMP Area that workers will be exposed to include the inorganic constituents (including metals) present in the Native Soil. The primary exposure routes include direct contact

³ A screening-level evaluation was performed to determine the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs. The equation used to calculate the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs is as follows:

$$\text{Dust Level (mg/m}^3\text{)} = \frac{\text{OSHA PEL (mg/m}^3\text{)}}{\text{Average Soil Concentration (mg/kg)}} \times \text{Conversion Factor (10}^6\text{ mg/kg)}$$

Using the 95 percent Upper Confidence Limit (UCL) of the arithmetic mean to estimate the average concentration of each of the nonvolatile constituents present in the soil, the level of dust that would need to be present within the workers breathing zone over an eight-hour period in order to exceed a chemical-specific OSHA PEL is 54 mg/m³. Given the fact that dust levels greater than 5 mg/m³ would seriously reduce visibility, and would cause unpleasant deposits in the eyes, ears and nasal passages, it is highly unlikely that levels of dust would ever reach sustained concentrations of 5 mg/m³. Thus, additional dust monitoring to determine whether workers are exposed to nonvolatile constituents at levels greater than the OSHA PELs is not necessary.

with the Native Soils (i.e., dermal contact with soil and incidental ingestion). Based on the known conditions in the Project Area, the minimum level of PPE for intrusive workers that will come into direct contact with Native Soils or ground water will be modified Level D. For the RMP Area, modified Level D protection will include a long-sleeved shirt, long pants, gloves, and boots. If unknown areas of contamination are identified during the construction activities, and if the air monitoring for volatiles indicates that the levels of volatiles present in the breathing zone exceed the OSHA-PELs, then the worker PPE will be upgraded to Level C. Upgrading to Level C is accomplished by donning a half-face air purifying respirator with the appropriate cartridge. Certain construction activities, such as the installation of utility trenches could result in workers coming into direct contact with ground water. The contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavation. However, limited direct contact with ground water could occur. In the event that excavations are occurring in areas with shallow ground water, additional PPE that will minimize contact with water, including water repellant gloves and boots, will be worn by workers.

Work Zones and Site Security Measures

This section of the EHASP will identify the specific work zones of the site, and will describe the site security measures such as the placement of barricades, fencing, access control and access logs. The work zone will be defined as the area of the site where the Native Soil movement or ground water activities are being conducted. All workers within the work zone who will have direct contact with the Native Soils or ground water will perform the work in compliance with all aspects of the EHASP. The support zone will be located outside of the work zone, but within the boundaries of the site. All end-of-the day cleanup operations, such as cleaning of the trucks wheels (for vehicles exiting the site that could be tracking Native Soils offsite), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the site. The entire site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

Decontamination Measures

This section of the EHASP will describe the specific procedures that will be used to decontaminate both equipment and personnel. Decontamination measures will include cleaning the wheels of all vehicles in the support zone prior to their exiting the site, if applicable. Additionally, any contaminated PPE will be removed and placed in a designated area in the support zone prior to leaving the site.

General Safe Work Practices

This section of the EHASP will discuss the general safe work practices to be followed at the site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, and any special precautions that may be specific to the site.

Contingency Plans/Emergency Information

This section of the EHASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash, first aid kit and a fire extinguisher, and emergency telephone numbers and contacts are identified. A map indicating the route to the nearest hospital is also provided in this section of the EHASP. San Francisco General Hospital is the closest hospital to the RMP Area. The address and phone number for San Francisco General is as follows:

San Francisco General Hospital
1001 Potrero Avenue
San Francisco, CA
(415) 206-8111

4.3.9 Quarterly Reports During Development

During periods of development on a given parcel that could result in disturbance of Native Soils or ground water, the Owner, Lessee, or their designee will prepare a quarterly status report

summarizing the activities occurring on that parcel. The primary purpose of the quarterly report is to keep the regulatory agencies apprised of the conditions arising during development. The quarterly status report will summarize the dust control measures being implemented, the results of the dust monitoring program, and any notification requirements that were triggered by the dust monitoring. Additionally, the quarterly report will summarize the results of the soil stockpile inspections, the discovery of any unknown contaminants or underground structures, and all response actions undertaken to manage such conditions. The quarterly report will be submitted within 30 days after the end of the calendar quarter to the SFDPH and the RWQCB. The Owner may request that the reports be submitted on a less frequent basis, if, based on the scale of the development, the anticipated time that the development activities will be occurring, or based on experience to date the Owner believes that less frequent reporting is appropriate. Upon the expressed approval of the RWQCB, the summary status reports may be submitted on an alternative, less frequent schedule. Quarterly reports will not be required for periods of development that will last less than four weeks.

4.3.10 Documentation of the Completion of Construction Work

At the conclusion of the development activities on parcels within the RMP Area, all Native Soils remaining on that parcel will be covered by buildings, parking lots, roads, sidewalks, or landscaping with between 1.0 to 1.5 feet of Fill, as specified in Sections 4.3.5.3 and 4.3.5.5. Following development of each parcel, a completion letter documenting that the cover is in place and is in compliance with Sections 4.3.5.3 and 4.3.5.5 of the RMP will be submitted to the RWQCB and the SFDPH. The completion letter will include a figure that will identify the location of any buildings, parking lots, roads, sidewalks and landscaping on the developed parcel.

4.3.11 Framework for Complying with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes

All construction activities in the RMP Area must comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Prior to the initiation of site development activities, a site contractor proposing to disturb 50 cubic yards or more of soil at sites located bayward of the 1851 high tide line must conduct environmental assessments of that

soil to determine if the chemicals are of sufficient concentration to cause the soil to be designated as hazardous waste, in connection with obtaining a building permit. Figure 5 presents a map of the 1851 high tide line.

As described in Appendix F, chemicals present at levels that exceed the state or federal hazardous waste levels trigger the need for the site contractor to propose measures, through a Site Mitigation Report, to address any significant health or environmental impacts, if any exist, prior to obtaining a building permit.

The framework provided below summarizes the steps that will be followed to implement and comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. As described in the preceding sections, the overall RMP for the entire RMP Area enumerates the various site mitigation measures that will be implemented throughout the development of the RMP Area and that will mitigate potential risks to human health and the environment that could be caused by the presence of chemicals in the soils or ground water. These measures will be completed at all times during the course of development, regardless of whether a building permit is required. As described more fully below, the approved RMP will become the Site Mitigation Report referred to in the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F and in the framework below, unless additional sampling conducted to comply with Appendix F indicates that the measures contained in the RMP are not sufficient. Unless additional measures not addressed in the RMP are necessary to mitigate risks, a separate Site Mitigation Report will not be submitted. The following steps shall be followed to implement compliance with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes:

- (1) Prior to obtaining a building permit from the City for a particular development activity in a portion of the RMP Area, the Owner, Lessee, or their designee will obtain confirmation from the SFDPH that the site history and sampling completed for that portion of the RMP Area (hereafter the "Site") to date are either (a) adequate to meet the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes, in Appendix F or (b) must be supplemented. In making this determination, the Owner, Lessee, or their designee will consider the analytes that had been analyzed in previous sampling events. As an example, methane sampling may be required.

- (2) If the Owner, Lessee, or their designee or SFDPH determine that supplementation of the site history or sampling is required, the Owner, Lessee or their designee will supplement the site history or sampling according to the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F.
- (3) After the Owner, Lessee, or their designee and SFDPH determine that the site history and sampling are complete, the Owner, Lessee, or their designee will review the sampling results to confirm that the RMP, using the risk-based corrective action approach and health-based criteria previously adopted by the RWQCB for the RMP Area in its approval of Mission Bay risk assessments (ENVIRON 1998a) satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified person is prepared to certify that the RMP will mitigate significant health and environmental risks).
- (4) If the Owner, Lessee, or their designee determines that the RMP meets the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit supporting documentation of that determination to the SFDPH and will provide the necessary certification required under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.
- (5) If the Owner, Lessee, or their designee determines that the RMP does not meet the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit a site-specific RMP Supplement to the SFDPH and the RWQCB containing additional risk mitigation or management measures for that Site. The submittal of the site-specific RMP Supplement will be accompanied by a certification necessary under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F. The certification shall confirm that the site-specific RMP Supplement, using the risk-based corrective action approach and the health-based criteria previously adopted for the RMP Area in approval of Mission Bay risk assessments, satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified individual is prepared to certify that the site-specific RMP Supplement will mitigate significant health and environmental risks).
- (6) Upon receipt of the certification specified in Steps Four or Five, the SFDPH will confirm that the Owner's or Lessee's certification is complete, that the applicant will have complied with the requirements of the Ordinance Requirements for Analyzing the Soil

for Hazardous Wastes presented in Appendix F upon completion of the mitigation measures applicable prior to and during construction, and will forward the certification to SFDPW so that the building permit may be issued.

- (7) Upon the completion of construction, the Owner, Lessee, or their designee will submit certification to the SFDPH that it has carried out those measures specified in the RMP or the Site-specific RMP Supplement (which satisfies the requirements for the Site Mitigation Report, as specified in Steps Three or Five) applicable prior to and during construction. Upon receipt of the certification, the SFDPH will provide the Owner, Lessee or their designee and the SFDPW with written notification that the Owner has complied with all requirements of the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.

~~4.4 Additional Management Measures Applicable to Development in the Free Product Area~~

~~A part of the RMP Area contains a measurable thickness of free petroleum product on the ground water table ("Free Product"), resulting from the historic use of that area for bulk petroleum storage and transport by numerous oil companies. The area affected by Free Product is located in the southeast quadrant of the RMP Area. As was summarized in Section 2.0, and presented in the risk assessments, the presence of Free Product will not adversely affect the health of the future populations in the area, either before or after development. However, additional management measures may be warranted when developing in the designated Free Product Area (defined below) in order to minimize impacts on construction workers and the environment. These additional measures are specified below. If Free Product is encountered in an area that is not contained in the Free Product Area (as that geographic area is deemed to change over time), then the procedures in Section 4.3.5.6.1 (Procedures for Discovery of Unknown Areas of Contamination) will apply.~~

~~All measures described below would be implemented in addition to other applicable risk management measures required by this RMP. These measures only apply to work in the area designated below as the Free Product Area.~~

5.0 RISK MANAGEMENT MEASURES AFTER DEVELOPMENT IS COMPLETE

5.1 Introduction

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to reduce long-term risks to human health and the environment from residual chemicals present in the soil and ground water after the development of parcels in the RMP Area is complete. The identification of the appropriate risk management measures was based on a comprehensive human health and ecological risk evaluation conducted to determine whether the existing environmental conditions would pose a risk to human health or the environment given the specific development plans for the RMP Area. Implementation of the management measures identified in this section is the responsibility of each Owner, Lessee, or their delegates with relevant property maintenance responsibilities.

The potential human health and ecological risks posed by the chemical constituents in the soil and ground water after development is complete are identified and discussed in Section 5.2. Section 5.3 describes the long-term risk management measures to be implemented in the RMP Area.

5.2 Identification of Potential Human Health and Ecological Impacts After Development is Complete

As described in Section 1.0, a human health and ecological risk assessment was conducted to determine whether the presence of chemicals in the soil or ground water would adversely impact human health or the environment once development of the RMP Area was complete. The populations included in the risk evaluation and the pathways through which each of the populations could be exposed to the chemicals present in the soil and ground water once development of the RMP Area is complete is presented in Appendix G. The conclusion of the risk assessment is that none of the chemicals is present at concentrations that will pose a threat to human health following the completion of the planned development. Further, with the potential exception of the Free Product Area, none of the chemicals is present at concentrations that would adversely impact the aquatic ecosystem. The potential ecological impacts associated with the Free Product Area is the subject of a separate investigation which is being conducted in accordance with RWQCB Order No. 98-028.

5.3 Long-Term Management of Risks After Development is Complete

The purpose of the following section is to describe the long-term management measures that will be undertaken to mitigate potential long-term risks to human health and the environment after construction and development of parcels in the RMP Area is completed and in the event of further construction or development at some point in the future. The components of the long-term risk management of the RMP Area are as follows:

- Covering of the RMP Area;
- Limiting future residential development within the RMP Area to preclude single family homes with private front yards or back yards;
- Restricting the future use of ground water for domestic, industrial or irrigation purposes through recordation of the Environmental Covenant;
- Providing protocols for future subsurface activities; and
- Implementing a long-term monitoring program.

These long-term risk management measures are discussed in the following sections. Compliance with all aspects of the RMP and the specific institutional controls that must remain in place during the occupancy of the RMP Area, is the specific responsibility of the Owner, Lessee or their delegates of each development area and is described further in Section 6.0.

5.3.1 Covering of the RMP Area

After development, all Native Soils will be covered by buildings, parking lots, roads, sidewalks or landscaping with between 1.0 and 1.5 feet of Fill, unless alternative measures are approved by the RWQCB. Any future development must ensure that Native Soils are precluded from contact with humans, by using buildings, pavement or appropriate Fill for landscaping.

5.3.2 Limitations on Future Development Within the RMP Area

The parcels within the RMP Area with land use designations permitting future residential development are identified in Figure 2. As indicated, the parcels targeted for residential use in Mission Bay North and Mission Bay South area are as follows:

- **Mission Bay North:** Parcels N1, N2, N3, N3a, N4, N4a and N5
- **Mission Bay South:** Parcels 2, 3, 4, 5, 6, 7, 9, 9a, 10, 10a, 11, 12, 13 and X2

Residential development within the RMP Areas identified above will be limited to preclude single family homes with private front or back yards. If residential development were to allow individual Owners or Lessees to have access to Native Soils, then those individuals would be subject to the applicable provisions of the RMP (Section 4.0).

If the Redevelopment Plans are amended to permit residential uses in areas currently designated for nonresidential use, then further risk assessment analysis will be conducted before additional residences could be built in these areas.

5.3.3 Use of Ground Water Within the RMP Area

The ground water within the RMP Area may not be used for domestic, industrial or irrigation purposes. Ground water wells will not be installed within the RMP Area except for environmental monitoring or dewatering purposes or for RWQCB-approved remediation. Environmental monitoring wells within the RMP Area would be installed in compliance with any City guidelines and would be secured and locked to prevent unauthorized access to the ground water. The ground water within the RMP Area would remain unused unless at some point in the future an assessment of the risks from direct exposure to the ground water is conducted and subsequently if the RWQCB as the Administering Agency under AB2061 approves the use of the ground water. The provision is detailed in the Environmental Covenant recorded against the properties within the RMP Area.

5.3.4 Protocols for Future Subsurface Activities

Entities contracting with Owners or Lessees to conduct maintenance, construction, or repair work which would result in the disturbance of soils under buildings, parking lots, walkways or landscaped areas would be bound by the specific requirements set forth in Section 4.0, as appropriate. Following construction, excavation, or soil disturbance, all Native Soil will be covered as described in Section 5.3.1 so that direct contact with the Native Soils will be precluded.

5.3.5 Long-Term Monitoring Program

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner (or some other entity such as a Lessee, which has by contract assumed the Owner's responsibility for compliance with the RMP after development) shall conduct an annual physical inspection of the property that confirms the following:

- The Native Soils continue to have the cover specified in Section 5.3.1 and the cover is maintained such that Native Soils are not exposed;
- Single family homes with private front or back yards are not developed within the RMP Area in accordance with Section 5.3.2;
- Ground water is not being used for domestic, industrial or irrigation purposes, as required in Section 5.3.3 and
- To the extent that the Owner or other entity procured subsurface work, the protocols for the subsurface activities were followed, as required by Section 5.3.4.

A Reporting Checklist is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample monitoring form identifying the items that should be included in the annual physical inspection is presented in Appendix C. Owners shall submit the annual inspection report to the RWQCB and the SFDPH by January 31 of each year. As indicated, the physical integrity of the cover, both the Fill in the landscaped areas and the asphalt/concrete in the other areas, will be monitored to verify that prolonged direct contact with Native Soils will not occur. For the landscaped areas, the identification of breaches in the landscaping will be aided by the synthetic fabric that will be placed between the Native Soils and the Fill during the initial development of the landscaped areas. If during the inspections, the synthetic fabric is observed, then this will serve as an indication that the Fill has deteriorated significantly and that the Fill needs repair. Similarly, the inspections of the asphalt or concrete covered areas will focus on identifying areas where breaches in the cover, and the potential for prolonged direct contact with exposed Native Soils could occur. Descriptions of the condition of the asphalt or concrete covered areas will be noted in the inspection reports, and any necessary repairs will be conducted and documented. As

the risk analyses have indicated that it is only the potential for prolonged (i.e., 25 to 30 year) daily direct contact with Native Soil that warrants management, an annual inspection/monitoring and repair program is appropriate.

6.0 REGULATORY OVERSIGHT AND ENFORCEMENT OF RMP

The purpose of this Section is to describe the regulatory oversight and enforcement mechanisms that will provide the structure for the risk management measures applicable to the RMP Area to remain in place and continue to be effective. Each Owner of any portion of the RMP Area will be notified of the RMP and its contents, and required to comply with it. This Section describes how and where the RMP will be maintained, and specifies the process through which Owners and Lessees will be notified of the RMP and informed of compliance obligations. Additionally, this Section identifies the monitoring/reporting requirements and enforcement procedures that can be exercised by the RWQCB to ensure compliance with all provisions of the RMP.

6.1.1 Public Repositories of the RMP

The RMP for the entire RMP Area shall be maintained in two locations:

- With the Administrative Clerk of the Regional Water Quality Control Board for the San Francisco Bay Region in a file labeled “Mission Bay Risk Management Plan Area” and maintained in the public record room for active RWQCB oversight sites. This file shall be available for public review during the normal business hours in the public record room.
- With the SFDPH for the City and County of San Francisco in a file labeled “Mission Bay Risk Management Plan Area” and available for public review during the normal business hours of the Department of Public Health.

Each page of the RMP approved by the RWQCB shall be dated with the month and year that the RWQCB has approved the RMP or its modifications. A page shall be added to the front of each copy of the RMP when modifications are inserted, indicating the dates and pages of the substitutions.

6.1.2 Contents of RMP Area File

Both the RWQCB and SFDPH will maintain an index for all RMP Area technical reports and data submitted. It shall include any technical reports submitted to the RWQCB or SFDPH for

the RMP Area, including without limitation, any reports or documents submitted to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. These files shall be available for public review during normal business hours.

6.2 Modifications to the RMP

It is anticipated that the provisions of the RMP may need to be amended from time to time.

Examples of circumstances that may require RMP modifications include but are not limited to:

- When currently unanticipated conditions are encountered during construction, the response to which is not specified in this RMP and it is believed that the conditions may recur;
- When the manner of construction used for particular buildings in the RMP Area is materially changed and necessitates different safeguards; or
- Evolving construction or landscape technologies or techniques allow the long-term management of risks identified in Section 5.0 to be accomplished in a different but equally protective ways.

This list is not exhaustive but merely representative of the kinds of changes that may trigger the need for appropriate modifications over the life of this project.

A proposed RMP modification will not be presented to the RWQCB unless the following entities concur in proposing the amendment: (i) the current Owner of the affected parcel; and (ii) Catellus, the City and/or the Redevelopment Agency, and the Regents of the University of California, to the extent that the proposed RMP modification affects RMP compliance obligations that are imposed upon them in their agreements with each other. All modifications proposed to the RWQCB must include a certification from the Owner that the Owner has reviewed all relevant technical reports and data on file with both the RWQCB and SFDPH, and that the modification complies with the FSEIR.

When such affected parties concur upon a proposed modification to the RMP, they will jointly present such proposed modifications to the RWQCB for their approval. The RWQCB will review the proposed changes, request any additional background information if needed, and issue a decision regarding the proposal within 45 days of receipt of a fully complete application supporting the requested modification. The decision of the RWQCB regarding the request for

modification shall be considered final and shall be accepted by all involved parties except that any aggrieved party can request that a RWQCB decision which is contrary to their interests be reviewed by the RWQCB itself at a regularly scheduled public hearing. Once the RWQCB has approved the RMP modifications, the RMP changes will be filed in the RWQCB public copy and with the Department of Public Health. The procedures for modification and review of the RMP proposed modifications set forth in this Section 6.0 are in addition to, and not in lieu of, any procedures for advance review, notice, approval and dispute resolution set forth in private contracts between Catellus Development Corporation, UCSF, the City, and the Redevelopment Agency.

6.3 Notification of Owners and Lessees and Identification of Compliance Obligations

An Environmental Covenant is recorded in the Official Records of the City and County of San Francisco against each parcel in the RMP Area and runs with the real property under California Civil Code 1471. The Environmental Covenant references the RMP and requires compliance with its provisions.

Because the Environmental Covenant is recorded, the Covenant will be provided to the Owners in the RMP Area, who will also become bound to comply, as a matter of law, with the Environmental Covenant. The Owners who have executed or become bound by the Environmental Covenant have also agreed by its terms to provide a copy of the RMP governing the parcel being transferred to applicable transferees.

The Environmental Covenant provides, among other things, that:

- Each Owner or Lessee will be deemed by their purchase, leasing or exclusive possession of the parcel within the RMP Area to be in compliance with the Environmental Covenant and the RMP. Recordation of the Environmental Covenant shall be binding on all Owners and Lessees, regardless of whether a copy of the Environmental Covenant has been attached to or incorporated into any given deed or lease.
- In all future leases, licenses, permits or other agreements between, on the one hand, an Owner or Lessee, and, on the other hand, another entity, which authorizes such entity to undertake or to engage in subject to one or more

requirements in this RMP, the Owner or Lessee will provide a copy of the RMP or its relevant provisions to such parties prior to the execution of the agreements and ensure that the agreements contain covenants that (i) such entity will comply with the RMP (to the extent the RMP applies to such parties' activities); (ii) that such entity will obligate other entities with which it contracts for construction, property maintenance or other activities that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP; and, (iii) such entity (and the entities with which it so contracts) will refrain from interfering with the title Owners' or Lessees' compliance with the RMP.

- In all agreements between an Owner and another entity provided for access to an affected parcel for the purpose of environmental mitigation, monitoring or remediation ("Environmental Response") by such entity, the Owner will provide the entity with a copy of the RMP prior to execution of the agreement and ensure that the agreements contain covenants by the entity that the entity will (i) comply with the RMP (to the extent the RMP applies to the entity's activities); and (ii) obligate any person or company with which it contracts for Environmental Response that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP.

6.4 Monitoring and Reporting

There are several junctures during the development of the RMP Area where this RMP, by its terms, requires monitoring and/or reporting. The monitoring and reporting requirements prior to, during, and after development are identified below. A Reporting Checklist, identifying each management measure and the specific reporting requirements for the different periods of development, is presented in Appendix C.

6.4.1 Prior to Commencement of Development

The Owner or Lessee (or some other entity, such as a property management company, designated or certified by the Owner or Lessee) shall follow the pre-development monitoring requirements described in Sections 3.2(v) and 3.2(vi). Appendix C presents a checklist summarizing the reporting requirements for parcels prior to the initiation of development.

6.4.2 During Development

- Prior to the initiation of construction activities within the Free Product Area, the Owner or Lessee will notify the RWQCB as described in Section 4.4.2(i).
- Prior to the commencement of development, the Owner or Lessee shall submit the dust monitoring notification to the RWQCB and the SFDPH, as described in Section 4.3.1.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall document implementation of the dust control measures, as described in Section 4.3.1.2 and shall comply with the requirements of the Dust Monitoring Program, set forth in Section 4.3.2.2. Further, the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall comply with the specific reporting requirements of the Dust Monitoring Program, as described in Section 4.3.2.2.7.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) must prepare, prior to certain types of construction activities, a Storm Water Pollution Prevention Plan (SWPPP), (as described in Section 4.3.3), must submit the SWPPP to the RWQCB, and must comply with the provisions detailed in the SWPPP.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall conduct quarterly inspections of any soil stockpiles as described in Section 4.3.5.2.4.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will provide any notification required under state, federal or local law and will provide notice of such conditions to the RWQCB as the Administering Agency for the RMP Area whenever the construction contractor encounters: (i) unknown areas of contamination in the soil or ground water, per the notification requirements described in Section 4.3.5.6.1(i) and 4.3.5.6.1(ii)(d); (ii) any other unanticipated environmental

condition, the response to which is not specified in the RMP; (iii) other indications of a release of hazardous substances or hazardous materials which is required by state or federal law to be reported to a state environmental agency; (iv) a UST, per the notification requirements described in Section 4.3.5.6.2.1; or (v) any underground structure such as a sump, vault, or other subsurface structure if it is determined that the structure was related to former use and storage of chemicals and/or releases to the underlying soils occurred, as described in Sections 4.3.5.6.2.2 (ii)(a) and 4.3.5.6.2.2(ii)(b)(2).

- The Owner or Lessee's designated contractor will submit the EHASP to the RWQCB prior to the initiation of construction if the construction project is projected to last more than four weeks, as described in Section 4.3.8.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare the quarterly status report, as described in Section 4.3.9.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare a completion letter, as described in Section 4.3.10.

Appendix C presents a checklist summarizing the reporting requirements for parcels during the period of development.

6.4.3 After Development is Complete

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner or Lessee (or some other entity such as a long-term lessee, which has by contract assumed the Owner's or Lessee's responsibility for compliance with the RMP after development) shall follow the long-term monitoring program described in Section 5.3.5. Appendix C presents a checklist summarizing the reporting requirements for parcels after development of the parcel is complete.

6.5 Enforcement Authority

Responsibility for determining whether RMP requirements have been breached and, if so, the initiation of any enforcement action where it is appropriate shall rest with the RWQCB. The information provided to the RWQCB, as set forth in Section 6.4 will apprise the RWQCB of the status of RMP compliance for the RMP Area. Upon learning that a particular parcel is not RMP compliant, the RWQCB has the authority to enforce the provisions of the Porter Cologne Water Quality Control Law, Sections 13000, *et seq.* of the Water Code, against certain entities, including those who have caused or permitted the discharge of pollutants to land where it may create a nuisance. Additionally, as the stated beneficiary of the Environmental Covenant, the RWQCB may enforce the RMP restrictions through a civil action brought against an Owner or a Lessee which is not in compliance with the RMP.

The RWQCB's enforcement activity is separate from and in addition to the enforcement authority retained by the City in ensuring compliance with Appendix F requirements during construction.

7.0 REFERENCES

- Association of Bay Area Governments. 1995. *Manual of Standards for Erosion and Sediment Control Measures, 2nd Edition*. May.
- Camp Dresser & McKee, Larry Walker Associates, Uribe and Associates and Resources Planning Associates. 1993. *Storm Water Quality Task Force, Construction Activity Best Management Practice Handbook*. March.
- ENVIRON Corporation. 1997. *Results of Investigation, Mission Bay North of Channel, San Francisco, CA*. April.
- ENVIRON Corporation. 1998a. *Site Investigation and Risk Evaluation Report, Mission Bay South of Channel, San Francisco, CA*. February.
- ENVIRON Corporation. 1998b. *Technical Memorandum #1: Approach to a Plan for Risk Management, Mission Bay Project Area, San Francisco, CA*. April.
- ENVIRON Corporation. 1998c. *Technical Memorandum #3: North of Channel Screening-Level Ecological Risk Evaluation, Mission Bay Project Area, San Francisco, CA*. April.
- ENVIRON Corporation. 1999. *Development of Health-Based Interim Target Levels for the Mission Bay Project Area. San Francisco, CA*. April.
- Regional Water Quality Control Board (RWQCB). 1998a. *Information on Erosion and Sediment controls for Construction Projects: A Guidebook (Note: date in manual is not listed)*.
- Regional Water Quality Control Board (RWQCB). 1998b. *Erosion and Sediment Control Field Manual (Note: date in manual is not listed)*.

Reporting Checklist

Period of Development	Risk Management Measure	Reporting Requirement
Pre-Development	<ol style="list-style-type: none"> 1. Access Restriction Measures <ol style="list-style-type: none"> a) Fences b) Asphalt/Concrete Cover 2. Monitoring of Soil Stockpiles 	Annual report to RWQCB and SFDPH pursuant to Section 3.2(v) and Section 3.2 (vi).
During Development	<ol style="list-style-type: none"> 1. Dust Control Measures 2. Dust Monitoring 3. Control of Off-site Runoff: Storm Water Pollution Prevention Plan 4. Management of Soil Stockpiles 5. Protocols to Manage/Control the Identification and/or Release of Unknown Contaminants from Underground Structures or USTs. 	<p><u>Prior to Commencement of Development</u></p> <ul style="list-style-type: none"> • Submit dust monitoring notification to RWQCB and SFDPH pursuant to Section 4.3.1. • Submit EHASP to RWQCB pursuant to Section 4.3.8 • Notification to the RWQCB prior to initiation of development in the Free Product Area, pursuant to Section 4.4.2 (i). • Submit site-specific SWPPP to RWQCB pursuant to Section 4.3.3 <p><u>During Development</u></p> <ul style="list-style-type: none"> • Notification to RWQCB and SFDPH if daily average dust levels exceed the dust monitoring target concentration, pursuant to Section 4.3.2.2.7. • Notification to RWQCB and SFDPH of the identification of unknown underground structures and unknown contaminants pursuant to Section 4.3.5.6. • Annual report to RWQCB and SFDPH documenting inspections of soil stockpiles pursuant to Section 4.3.5.2.4. • Quarterly status report to RWQCB and SFDPH during development pursuant to Section 4.3.9. <p><u>Conclusion of Development</u></p> <ul style="list-style-type: none"> • Completion letter regarding cover submitted to the RWQCB and SFDPH pursuant to Section 4.3.10.
Post Development	<ol style="list-style-type: none"> 1. Cover <ol style="list-style-type: none"> a) Asphalt/Concrete b) Landscaping 2. No Single Family Homes 3. No Use of Groundwater 4. Subsurface Activities Conducted in Compliance with Health and Safety Protocols 	Annual report submitted to RWQCB and SFDPH pursuant to Section 5.3.5.

**INSPECTION/MONITORING SAMPLE FORM ^a:
PRIOR TO DEVELOPMENT**

Parcel ID: _____

Owner: _____

**Individual Conducting
Inspection:** _____

Date of Inspection: _____

1) FENCES

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

2) ASPHALT AND/OR CONCRETE COVER

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

3) SOIL STOCKPILES

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

^a The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

**INSPECTION/MONITORING SAMPLE FORM ^a:
LONG-TERM MONITORING AFTER DEVELOPMENT IS COMPLETE**

Parcel ID: _____

Owner: _____

**Individual Conducting
Inspection:** _____

Date of Inspection: _____

1) LANDSCAPED AREAS

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

2) ASPHALT AND/OR CONCRETE COVER

Description of Condition:

Description of Repairs/Areas Requiring Repairs:

Date of Repair:

3) ARE SINGLE FAMILY RESIDENCES PRESENT?

Yes ☐ No ☐

Comment:

4) CONFIRMATION THAT GROUND WATER USE IS NOT OCCURING

Yes ☐ No ☐

Comment:

5) CONFIRMATION THAT SUBSURFACE ACTIVITIES CONDUCTED IN COMPLIANCE WITH HEALTH AND SAFETY PROTOCOLS

Yes ☐ No ☐

Comment:

^a The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

EXHIBIT D
LICENSEE'S MAINTENANCE PLAN

EXHIBIT D-1
LICENSEE'S MAINTENANCE MONITORING AND REPORTING PROGRAM

SCHEDULE 1

HAZARDOUS MATERIALS DISCLOSURE

Environmental Reports and Documents Regarding Hazardous Materials

Hazardous Substances

Reference List

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- Department of Public Health, Environmental Section. 2008. Remedial Action Completion Certification, Underground Storage Tank (UST) Case, Commercial Property, 145 China Basin Street, San Francisco, LOP Case Number: 10318. April 15.
- Department of Toxic Substances Control. 1992. RCRA Facility Assessment, for H & H Ship Service Co., Inc., Berkeley, California. October.
- Department of Toxic Substances Control. 2000. Closure Certification Approval for the Tank Cleaning Area, Container Storage Area, and Stabilization Unit at the Former H & H Ship Service Company, 220 Terry Francois Boulevard, San Francisco, California, EPA ID No. 004771168. January 27.
- Department of Toxic Substances Control. 2017. Voluntary Cleanup Agreement, Health and Safety Code Section 25355.5(a)(1) ©, In the Matter of: Former H & H Ship Service Co., Proponent: Port of San Francisco Pier 1 – The Embarcadero, San Francisco, CA 94111. May 18.
- Department of Toxic Substances Control. 2018. Letter from DTSC to Carol Bach about revised Summary of Analytical Results from Previous Environmental Investigations and Preliminary Risk Assessment. February 16.
- Department of Toxic Substances Control. 2018. Notice of Public Hearing H & H Ship Service Company (220 China Basin Street, San Francisco, California 94107). December 5.

Hazardous Substances

Reference List

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Hazardous Substances

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Hazardous Substances

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Hazardous Substances

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SCHEDULE 2

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.

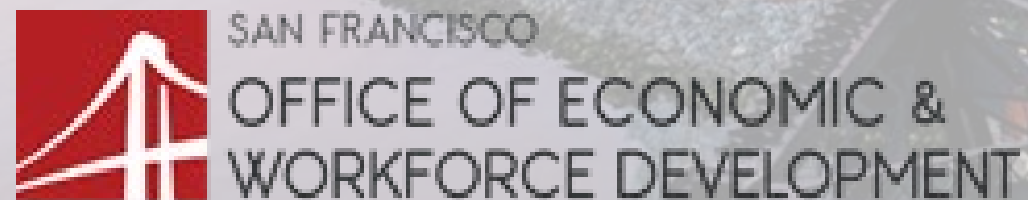
Mission Rock Phase 1 Acceptance:

China Basin Park Lease and Loan Agreement, Management Agreement for Public Open Space, Licenses for Maintenance and Operation of Utility Infrastructure

April 9, 2025

Presented By:

Wyatt Donnelly-Landolt
Port of San Francisco



Project Overview & Context – Phase 1

Housing: 2 buildings

- 537 units total, 25% affordable

Commercial Office: 2 buildings

- 550,000 gross square feet

Ground Floor Retail

- 52,000 square feet

China Basin Park, 5 Acres

District Energy + Non-potable Blackwater Systems

Infrastructure

- Phase 1 streets, sidewalks, associated improvements, utilities, public open spaces/paseos



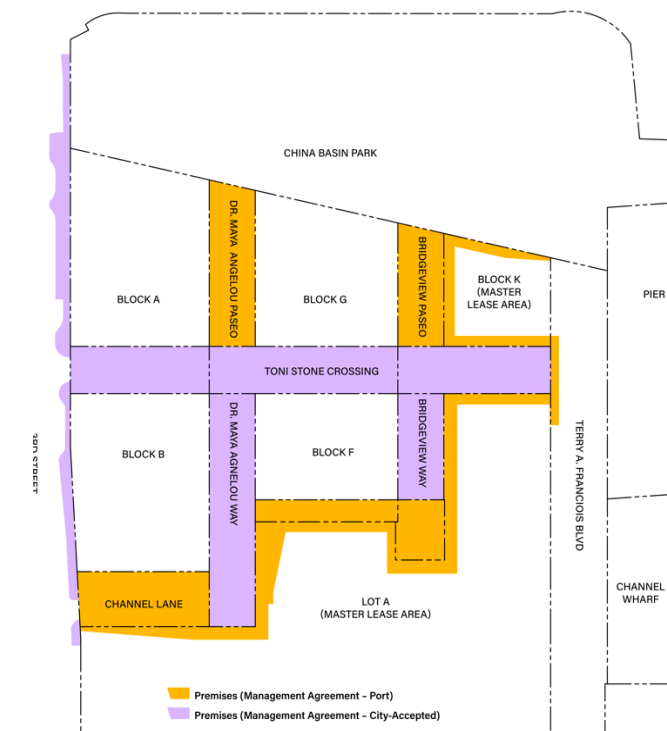
Port Acceptance Items

China Basin Park / Port Open Spaces – All Assets

- Plantings: Landscaping, trees, stormwater garden, irrigation
- Spaces: Dog run, public restrooms, “beach”, seat walls, plazas
- Utilities: Lighting furnishings, bollards, water fountains, utilities systems

City-Accepted Port Streets – Only Non-Standard Assets

- Surface features: Custom benches & trash cans, public art, landscaping
- Shared Public Way features: Special paving, stone bollards, trench drain, fire lane markers, flush curbs
- Utilities: Port electrical system in DMA for activation, irrigation systems, utility connections to Port open space



Lease, Management, and Land Rights Agreements

1. China Basin Park Lease & Loan Agreement (“Park Lease”)
2. Paseos & Open Space Management Agreement (“Management Agreement”)
3. PG&E Gas License
4. PG&E Electric License and Absolving Services Agreement
5. Mission Rock Utilities License



Photo by Jason O'Rear

Lease, Management, and Maintenance of Port Assets

- Mission Rock Commons operates, maintains, and programs China Basin Park and other Port spaces
- 15-year initial term with three 5-year options
- Operations and maintenance funded by Master Association dues

China Basin Park Lease & Loan Agreement

- Sponsorship and Programming revenue support Park operations
- Start up loan of \$300k/yr for the first 3 years to a total maximum of \$800k

Port Open Space Management Agreement

- Qualified Management Agreement
- \$10k/yr management fee plus reimbursements for costs
- Strict limitations on private uses (e.g., retail sidewalk seating)



Photo by Jason O'Rear

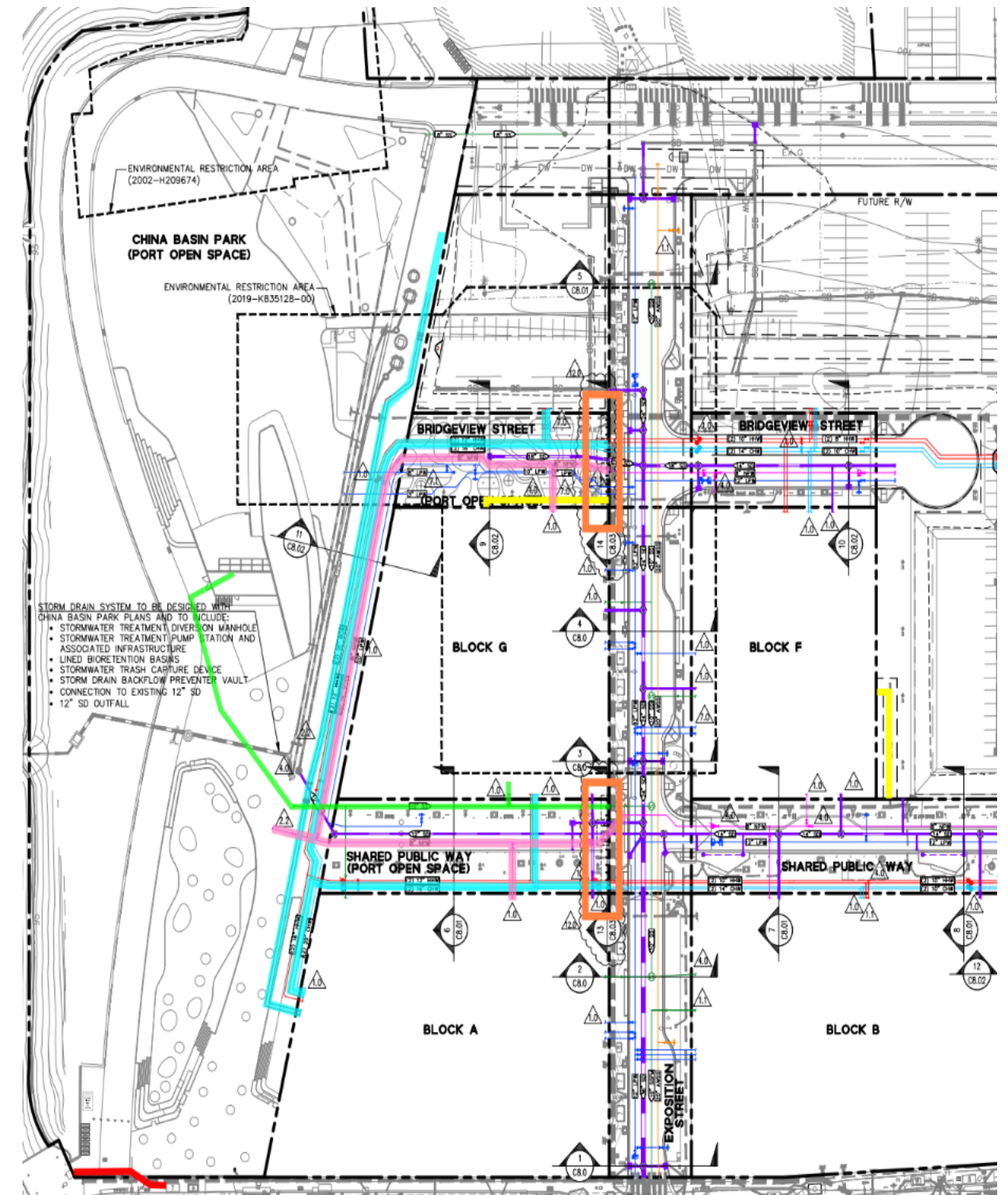
Land Rights / Access Agreements

PG&E Licenses, Absolving Services Agreement

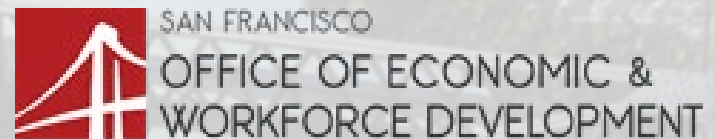
- Grants PG&E access for maintenance, repair of:
 1. Two gas lines to Building G (Visa) and Building F (Verde)
 2. Electric line through China Basin Park to 3rd St Bridge Pilot House
- 66-year term, no fee
- Electric license requires Absolving Services Agreement

Mission Rock Utilities License

- Grants access rights to MRU for District Energy System, Blackwater Recycling System infrastructure
- 66-year term, no fee



Questions?



Click on this page to be forwarded to the Legislative Research Center to view the entirety of this voluminous document.

**INTERDEPARTMENTAL MASTER ENCROACHMENT PERMIT
AND MAINTENANCE AGREEMENT (Mission Rock - Phase 1)**

1. PARTIES AND BACKGROUND

1.1 Parties. The City and County of San Francisco Department of Public Works (the “**Department**” or “**Public Works**”) enters into this Interdepartmental Master Encroachment Permit and Maintenance Agreement (“**Agreement**”) with the Port of San Francisco (the “**Permittee**” or “**Port**”), on this date, _____, 2024 for reference purposes only (“**Reference Date**”). The Interdepartmental Master Encroachment Permit collectively refers to the Department approved plan(s), street improvement permit(s), and other authorizations, and this Agreement, including its Attachments, Addenda, and accompanying documents (the “**Permit**” or “**IMEP**”). In this Agreement, “the **City**” refers to the City and County of San Francisco and all affiliated City agencies including, but not limited to, the Department, the San Francisco Public Utilities Commission (“**SFPUC**”), the San Francisco Fire Department (“**SFFD**”), the San Francisco Municipal Transportation Agency (“**SFMTA**”), and Port in its regulatory capacity, but not in Port’s proprietary capacity as trustee and Permittee. (Port and City are collectively, the “**Parties**”).

1.2 Background.

1.2A This Interdepartmental Master Encroachment Permit is approved by the Board of Supervisors of the City and County of San Francisco and issued to the Port of San Francisco, a department of the City and County of San Francisco under the authority of the Port Commission and pursuant to its trust obligations pursuant to the Burton Act. The terms of this Permit are based upon the identity and relationship of Public Works and the Port as constituent parts of the City and County of San Francisco, and as cooperative partners in exercising their respective responsibilities pursuant to the San Francisco Charter, Municipal Code, California Constitution, and other applicable laws. The Parties acknowledge and anticipate that the terms and conditions may differ for a Master Encroachment Permit issued to a different permittee, including pursuant to any assignment hereunder.

1.2B The City entered into a Development Agreement with Seawall Lot 337 Associates, LLC (“**Master Developer**”) dated as of August 15, 2018, and recorded in the City’s official records on August 17, 2018, as Instrument No. DOC-2018-K656939-00 (the “**DA**”), and Port entered into a Disposition and Development Agreement with Master Developer, dated as of August 15, 2018, and recorded in the City’s official records on August 17, 2018, as Instrument No. DOC-2018-K656938-00, as may be amended (the “**DDA**”).

1.2C The Port and Master Developer also entered into a Master Lease dated as of August 15, 2018, a memorandum of which was recorded in the Official Records on August 17, 2018 as Document No. 2018-K656941-00 (the “**Memorandum of Master Lease**”), as amended by that certain First Memorandum of Technical Corrections which was further memorialized in that certain First Memo of Technical Corrections that was recorded in the Official Records on January 31, 2020 as Document No. 2020-K898106, and as further amended by that certain First



**CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR**

**FOURTH AMENDMENT TO
MISSION ROCK MASTER LEASE**

LEASE NO. L-16417

BETWEEN THE

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AS LANDLORD

AND

**SEAWALL LOT 337 ASSOCIATES, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

AS TENANT

DATED AS OF _____, 2025

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE- PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

FOURTH AMENDMENT TO MASTER LEASE

THIS FOURTH AMENDMENT TO MASTER LEASE NO. L-16417 (this “**Fourth Amendment**”) dated for reference purposes as of January __, 2025, is by and between **THE CITY AND COUNTY OF SAN FRANCISCO** (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as landlord, and **SEAWALL LOT 337 ASSOCIATES, LLC**, a Delaware limited liability company, as tenant (“**Tenant**” and “**Master Developer**”).

THIS FOURTH AMENDMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Waterfront Plan is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port and Tenant entered into the Mission Rock Master Lease – Lease No. L-16417, dated for reference purposes as of August 15, 2018 (the “**Original Master Lease**”), as evidenced by the Memorandum of Master Lease, dated August 15, 2018, by and between Port and Tenant, and recorded on August 17, 2018 as Document Number 2018-K656941-00 (the “**Original Memo of Lease**”) in the Official Records of the City and County of San Francisco (the “**Official Records**”), under which Tenant leased the Initial Premises from Port.

C. Port and Master Developer are parties to the Disposition and Development Agreement dated August 15, 2018 (as amended and as the same may be amended and assigned from time to time, the “**DDA**”) that governs the Project Site. The Initial Premises is a portion of the Project Site.

D. On November 25, 2019, Port and Tenant entered into Lease No. L-16417 Letter of Technical Corrections, (the “**Letter Agreement**”), memorializing certain modifications to the Original Master Lease.

E. Port and Tenant entered into the Memorandum of Technical Corrections, dated January 16, 2020, by and between Port and Tenant, (the “**Memo of Technical Corrections**”), a memorandum of which was recorded on January 31, 2020, as Document Number 2020-K898106 in the Official Records (the “**First Amended Memo of Lease**”), under which the Parties reflected certain changes to the legal description and square footages of the Premises, in accordance with the Original Master Lease.

F. Master Developer assigned all of its rights, title, and interest in and to the DDA with respect to a portion of the Project Site to Mission Rock Horizontal Sub (Phase 1), L.L.C., a Delaware limited liability company (“**Phase 1 Horizontal Developer**”), pursuant to the Assignment and Assumption Agreement (Mission Rock Project; Phase 1), dated December 18, 2019, by and between Master Developer and Phase 1 Horizontal Developer, recorded on December 19, 2019, as Document No. 2019-E879368 in the Official Records.

G. On June 25, 2020, Port and Tenant entered into the First Amendment to Master Lease (the “**First Amendment to Master Lease**”) under which the Parties reflected certain changes to the Original Master Lease as provided therein.

H. On October 16, 2020, Port and Tenant entered into the Second Amendment to Master Lease (the “**Second Amendment to Master Lease**”), under which the Parties agreed to certain changes to the Original Master Lease, as amended, as provided therein, a memorandum of which was recorded on December 10, 2020, as Document Number 2020-065518 in the Official Records (the “**Second Amended Memo of Lease**”).

I. On February 1, 2021, Port and Tenant entered into the Third Amendment to Master Lease (the “**Third Amendment to Master Lease**”, and together with the Original Master Lease, the Letter Agreement, the Memo of Technical Corrections, the First Amendment to Master Lease and Second Amendment to Master Lease, the “**Existing Master Lease**”), under which the Parties agreed to certain changes to the Original Master Lease, as amended, as provided therein, a memorandum of which was recorded on June 3, 2021, as Document Number 2021-090340 in the Official Records (the “**Third Amended Memo of Lease**”, and together with the Original Memo of Lease, the First Amended Memo of Lease and Second Amended Memo of Lease, the “**Memo of Lease**”).

J. The Parties desire to amend the Existing Master Lease to adjust the Premises to remove from the Premises certain Horizontal Improvement Parcels that were Accepted by the City, all as more particularly set forth herein. The Existing Master Lease, as amended by this Fourth Amendment, is referred to herein as the “**Master Lease**”.

K. All capitalized terms used herein shall have the meanings assigned them in the Existing Master Lease or have the meanings given them when first defined herein.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Adjustment of Premises.

- a. Adjusted Premises. As of the Effective Date, the Premises is hereby amended to remove those certain Horizontal Improvement Parcels, together with any and all improvements and alterations thereto, which were Accepted by the City and/or Port as documented by the Parties in that certain DDA and Master Lease Partial Release and as particularly described and depicted on the attached ***Attachment 1*** and made a part hereof (“**Released Premises**”). Accordingly, Exhibit A-1 and Exhibit A-2 of the Existing Master Lease are replaced in their entirety by the attached ***Exhibit A-1 (2025)*** and ***Exhibit A-2 (2025)*** to this Fourth Amendment that reflects the Premises, as adjusted. The Parties further agree (i) that the Premises, as adjusted, consists of approximately _____ square feet, and (ii) to execute, acknowledge, and record a Fourth Amendment to Memorandum of Lease (the “**Update**”) to update the Memo of Lease in substantially the same form as attached hereto as ***Exhibit B***, such that the recorded memorandum of the Lease reflects the revised Premises set forth in this Fourth Amendment; provided, however, the Parties agree and acknowledge that failure to execute or record the Update will have no effect on the validity or effectiveness of this Fourth Amendment.
- b. For the avoidance of doubt, once the DDA and Master Lease Partial Release for the applicable Released Premises is recorded in the Official Records, then Tenant’s Leasehold Estate in the Released Premises will be terminated and other than the obligations that survive the expiration or termination of the Master Lease, the Master Lease will be terminated as it applies to such Released Premises.

2. Miscellaneous.

- a. Successors and Assigns. This Fourth Amendment is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant, and any Mortgagee. Where the term “Tenant,” “Port,” or “Mortgagee” is used in this Fourth Amendment, it means and includes their respective successors and assigns, or including, as to Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Fourth Amendment specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or the entity which has succeeded to Port’s rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Fourth Amendment.
- b. No Third-Party Beneficiaries. This Fourth Amendment is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Article 37 of the Existing Master Lease with regard to Mortgagees.
- c. Counterparts. This Fourth Amendment may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument
- d. Entire Agreement. The Existing Master Lease (as amended by this Fourth Amendment) (including the Exhibits) constitutes the entire agreement between the Parties with respect to the subject matter set forth therein, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement will be permitted to contradict or vary the terms of the Master Lease.
- e. Amendment. Neither the Existing Master Lease (as amended by this Fourth Amendment) nor any of the terms hereof may be terminated, amended, or modified except by a written instrument executed by the Parties. Except as provided in this Fourth Amendment, the Existing Master Lease is unmodified hereby, and as modified by this Fourth Amendment, the Master Lease remains in full force and effect.
- f. Counsel. Each Party acknowledges that: (i) it was represented by counsel in connection with this Fourth Amendment; (ii) it executed this Fourth Amendment with the advice of counsel; and (iii) this Fourth Amendment is the result of negotiations between the Parties and the advice and assistance of their respective counsel.
- g. Severability. If any provision of this Fourth Amendment, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision will not affect any other provision of this Fourth Amendment or the application of such provision to any other Person or circumstance, and the remaining portions of this Fourth Amendment will continue in full force and effect, unless enforcement of this Fourth Amendment as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Fourth Amendment.

- h. Authority. Each Party has the requisite power and authority to execute and deliver this Fourth Amendment and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Fourth Amendment and the agreements contemplated hereby to be performed by Tenant and Port and upon execution, are legal, valid, and binding obligations of Tenant and Port, enforceable against Tenant and Port in accordance with its terms; and do not violate any provision of any agreement or judicial order to which Tenant or Port is a party or to which Tenant or Port is subject.

[Remainder of page intentionally left blank.]

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

Tenant

SEAWALL LOT 337 ASSOCIATES, LLC,
a Delaware limited liability company

By: Mission Rock Partners LLC,
its sole member

By: TSCE 2007 Mission Rock, L.L.C
its administrative member

By: _____
Name: _____
Title: _____

Port

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Nancy Taylor
Deputy City Attorney

Port Commission Resolution No. ____ - ____, adopted on _____
Board of Supervisors Resolution No. ____ - ____, adopted on _____

Signature Page to Fourth Amendment to Mission Rock Master Lease

ATTACHMENT 1
RELEASED PREMISES

DRAFT TO BE UPDATED:

Parcel 1: Dr. Maya Angelou Way Paseo, identified as APN 8719B-001; and

Parcel 2: Bridgeview Way Paseo, identified as APN 8719A-007; and

Parcel 3: Channel Street Open Space, identified as APN 8719C-004; and

Parcel 4: Westerly portion of Toni Stone Crossing, identified as APN 8719B-003; and

Parcel 5: Middle portion of Toni Stone Crossing, identified as APN 8719A-009; and

Parcel 6: Easterly portion of Toni Stone Crossing, identified as APN 8719A-010; and

Parcel 7: Dr. Maya Angelou Way, identified as APN 8719C-002; and

Parcel 8: Bridgeview Way, identified as APN 8719D-001; and

Parcels 9-12: [Port and Developer defining at least four other areas to be removed from Master Lease:

China Basin Park,

Portion of Parcel I,

Bridgeview cul de sac, and

walkway along MR Commons. **MR to provide descriptions and drawings]**

in the City and County of San Francisco, State of California, together with any and all improvements and alterations thereto.

EXHIBIT A-1 (2025)

LEGAL DESCRIPTION OF MASTER LEASE PREMISES (AS ADJUSTED)

EXHIBIT A-2 (2025)

DEPICTION OF MASTER LEASE PREMISES (AS ADJUSTED)

DRAWING NAME: \\BKF-01\vol\4\2025\050000\Mission Rock\Exhibit\25_02008 MasterLeaseExhibit.dwg
PLOT DATE: 02-09-25
PLOTTED BY: BKF

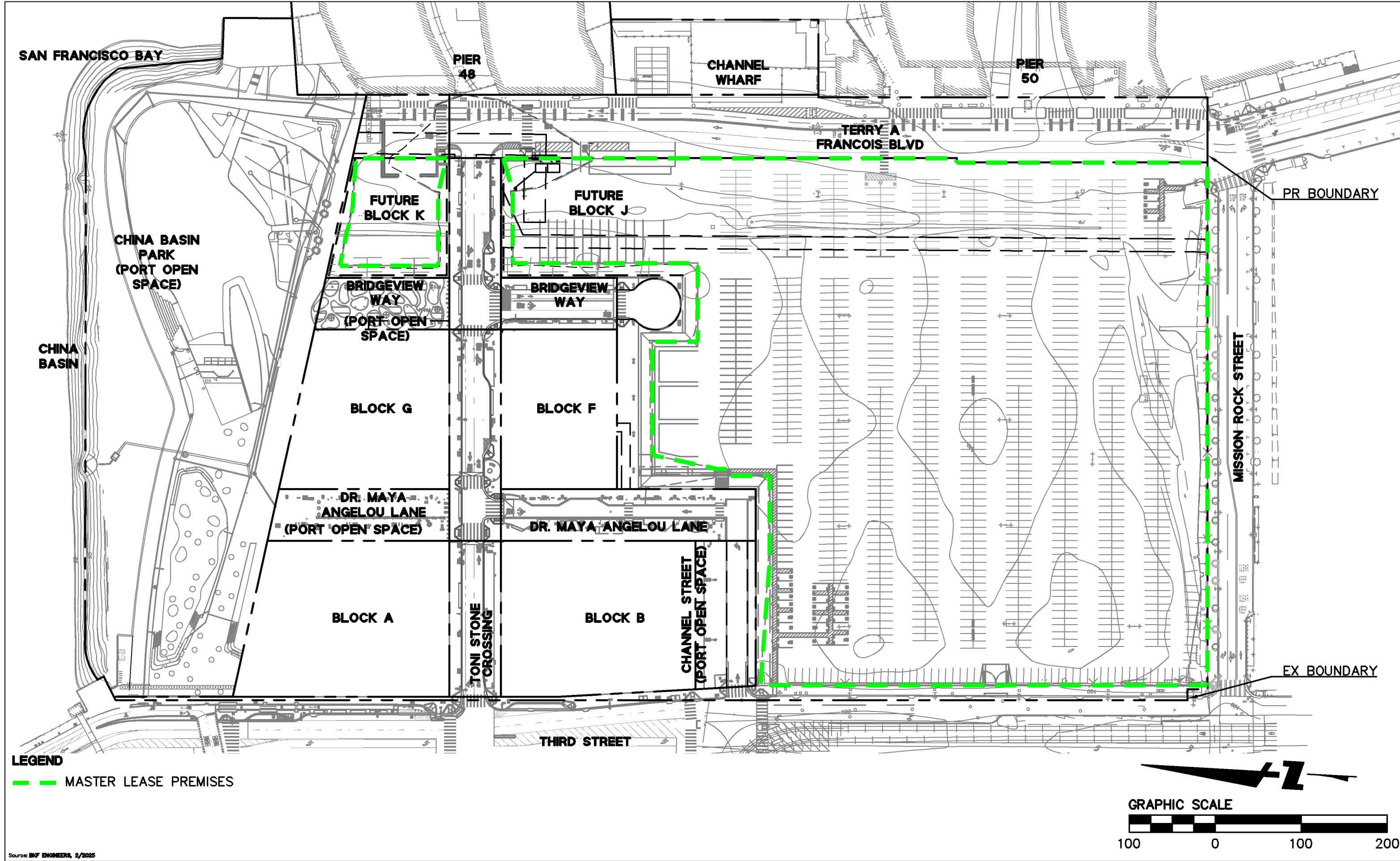


EXHIBIT B

FORM

FOURTH AMENDMENT TO MEMORANDUM OF MASTER LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attn:

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code
§ 27383) and Documentary Transfer Tax (CA Rev. &
Tax Code § 11922 and S.F. Bus. & Tax Reg. Code
§ 1105)

Assessor's Parcel No.:

(Space above this line reserved for Recorder's use only)

FOURTH AMENDMENT TO MEMORANDUM OF MASTER LEASE

THIS FOURTH AMENDMENT TO MEMORANDUM OF MASTER LEASE
(this "**Fourth Amendment**") dated _____, 2025, for reference purposes only, but
effective as of _____, 2025, is by and between the **CITY AND COUNTY OF
SAN FRANCISCO**, a municipal corporation (the "**City**"), operating by and through the **SAN
FRANCISCO PORT COMMISSION ("Port")**, and **SEAWALL LOT 337 ASSOCIATES,
LLC**, a Delaware limited liability company (the "**Tenant**").

1. Master Lease Agreement. Port and Tenant have entered into that certain:

(i) Master Lease dated as of August 15, 2018 (the "**Original Master Lease**"),
a memorandum of which was recorded in the Official Records of the City and County of
San Francisco (the "**Official Records**") on August 17, 2018, as Document Number 2018-
K656941-00 (the "**Memo of Lease**");

(ii) Memorandum of Technical Corrections, dated as of January 16, 2020 (the
"**Memo of Technical Corrections**"), a memorandum of which titled First Amendment
to Memorandum of Master Lease was recorded in the Official Records on January 31,
2020 as Document Number 2020-K898106 (the "**First Amended Memo of Lease**");

(iii) First Amendment to Master Lease dated as of June 25, 2020 (the "**First
Amendment to Master Lease**");

(iv) Second Amendment to Master Lease dated October 16, 2020 (the
"**Second Amendment to Master Lease**"), a memorandum of which titled Second
Amendment to Memorandum of Master Lease was recorded in the Official Records on
December 10, 2020, as Document Number 2020-065518 (the "**Second Amended Memo
of Lease**");

(v) Third Amendment of Master Lease dated February 1, 2021 (the “**Third Amendment to Master Lease**”) a memorandum of which titled Third Amendment to Memorandum of Master Lease was recorded in the Official Records on June 3, 2021, as Document Number 2021-090340 (the “**Third Amended Memo of Lease**” and together with the Memo of Lease, the First Amended Memo of Lease and Second Amended Memo of Lease, the “**Memo of Lease**”); and

(vi) Fourth Amendment of Master Lease dated _____, 2025 (the “**Fourth Amendment to Master Lease**”, and together with the Original Master Lease, the Memo of Technical Corrections, the First Amendment to Master Lease, Second Amendment to Master Lease, Third Amendment to Master Lease and Memo of Lease, the “**Existing Master Lease**”). Except as otherwise defined in this Fourth Amendment, capitalized terms shall have the meanings given them in the Existing Master Lease.

2. Adjustment to Premises. The parties executed the Fourth Amendment to Master Lease to adjust the Premises to reflect the removal of the Horizontal Improvement Parcels, together with any and all improvements and alterations thereto, which were Accepted by the City and/or Port as documented by the parties in certain DDA and Master Lease Partial Release(s). Accordingly, as of [date of recordation of DDA and Master Lease Partial Release(s)], 2025, Exhibit A-1 and Exhibit A-2 of the Existing Master Lease are replaced in their entirety by the attached Exhibit A-1 (2025) and Exhibit A-2 (2025) to this Fourth Amendment that reflects the Premises, as adjusted. The Parties further agree that the Premises, as adjusted, consists of approximately _____ square feet.

3. Effect of Recordation of Partial Release(s). The Master Lease contemplates that the Port and Tenant will from time to time execute and record a Partial Release of Master Lease covering a certain portion of the Premises in the Official Records (“**Released Portion of the Premises**”). Recording of a Partial Release of Master Lease will automatically terminate the Master Lease as it applies to the Released Portion of the Premises that is the subject of the Partial Release of Master Lease, and after such recording, other than the terms and provisions that survive expiration or earlier termination of the Master Lease, as to the Released Portion of the Premises, the Master Lease shall have no further force or effect on such Released Portion of the Premises.

4. Notice. The parties have executed and recorded this Fourth Amendment to give notice of the Master Lease and their respective rights and obligations under the Master Lease to all third parties. The Master Lease is incorporated by reference in its entirety in this Fourth Amendment. In the event of any conflict or inconsistency between this Fourth Amendment and the Master Lease, the Master Lease shall control.

5. Counterparts. This Fourth Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to Memorandum of Master Lease to be executed by their duly appointed representatives as of the last date set forth below.

Tenant

SEAWALL LOT 337 ASSOCIATES, LLC,
a Delaware limited liability company

By: Mission Rock Partners LLC,
its sole member

By: TSCE 2007 Mission Rock, L.L.C
its administrative member

By: _____
Name: _____
Title: _____

Port

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Nancy Taylor
Deputy City Attorney

Port Commission Resolution No. ____ - ____, adopted on _____
Board of Supervisors Resolution No. ____ - ____, adopted on _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attn:

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

Assessor's Parcel No.:

(Space above this line reserved for Recorder's use only)

DDA AND MASTER LEASE PARTIAL RELEASE
(Phase 1 Horizontal Infrastructure)

This **DDA AND MASTER LEASE PARTIAL RELEASE** (this “**Partial Release**”), dated for reference purposes only as of _____, 2025 (the “**Reference Date**”), is made by the **CITY AND COUNTY OF SAN FRANCISCO** (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as landlord, and **SEAWALL LOT 337 ASSOCIATES, LLC**, a Delaware limited liability company (“**Tenant**” or “**Master Developer**”), with reference to the following facts and circumstances:

A. Tenant and Port entered into: that certain Master Lease dated for reference purposes as of August 15, 2018 (the “**Original Master Lease**”), a memorandum of which was recorded in the Official Records of the City and County of San Francisco (the “**Official Records**”) on August 17, 2018, as Document Number 2018-K656941-00 (the “**Memo of Lease**”); that certain Memorandum of Technical Corrections, dated as of January 16, 2020 (the “**Memo of Technical Corrections**”), a memorandum of which titled First Amendment to Memorandum of Master Lease was recorded in the Official Records on January 31, 2020 as Document Number 2020-K898106 (the “**First Amended Memo of Lease**”); that certain First Amendment to Master Lease dated as of June 25, 2020 (the “**First Amendment to Master Lease**”); that certain Second Amendment to Master Lease dated October 16, 2020 (the “**Second Amendment to Master Lease**”), a memorandum of which titled Second Amendment to Memorandum of Master Lease was recorded in the Official Records on December 10, 2020, as Document Number 2020-065518 (the “**Second Amended Memo of Lease**”); and that certain Third Amendment of Master Lease dated February 1, 2021 (the “**Third Amendment to Master Lease**”), a memorandum of which titled Third Amendment to Memorandum of Master Lease was recorded in the Official Records on June 3, 2021, as Document Number 2021-090340 (the “**Third Amended Memo of Lease**” and together with the Memo of Lease, the First Amended Memo of Lease and Second Amended Memo of Lease, the “**Memo of Lease**”).

B. Master Developer and Port also entered into that certain Disposition and Development Agreement dated August 15, 2018 (as amended and as the same may be further

amended and assigned from time to time, the “**DDA**”) that governs the Project Site. The DDA was recorded in the Official Records on August 17, 2018 as Document No. 2018-K656938-00.

C. On December 18, 2019, Master Developer assigned all of its rights, title, and interest in and to the DDA with respect to a portion of the Project Site to Mission Rock Horizontal Sub (Phase 1), L.L.C., a Delaware limited liability company (“**Phase 1 Horizontal Developer**”), pursuant to that certain Assignment and Assumption Agreement (Mission Rock Project; Phase 1), dated December 18, 2019, by and between Master Developer and Phase 1 Horizontal Developer, recorded on December 19, 2019, as Document No. 2019-E879368 in the Official Records.

D. Master Lease Section 1.4(b) provides that Port and Tenant will execute and record a DDA and Master Lease Partial Release for that portion of the Premises on which Tenant has constructed Horizontal Improvements that have been accepted by Port or other City Agencies, as applicable, in accordance with DDA Section 14.7 (Acceptance of Port Facilities) and DDA Section 14.8 (Acceptance of Other Horizontal Improvements) and DDA Section 18.3(b) provides for the release of the lien of the DDA. By **[insert Port resolution No. , dated_, 20XX]**, a copy of which is attached hereto as **Exhibit B**, Port Accepted the Park Parcels and Phase 1 Improvements described in Resolution No. [_] that are contained within that portion of the Premises described in **Exhibit A-1** and shown on the map attached hereto as **Exhibit A-2** (the “**Release Parcel**”), and authorized the Port Executive Director or her designee to sign and record this Partial Release after satisfaction of all conditions required by the Port Commission for acceptance. All conditions to Resolution No. [__] have been satisfied. Accordingly, the Parties wish to enter into this Partial Release and record the same in the Official Records.

E. By recording this Partial Release, the Parties seek to notify third parties that the Premises described in the Master Lease will be further adjusted by the release of the Release Parcel and that the lien of the DDA is released from the Release Parcel.

NOW THEREFORE, in consideration of the foregoing facts, understandings, and agreements, the Parties agree as follows:

AGREEMENT

1. In accordance with Master Lease Section 1.4(b) (Horizontal Improvement Parcels), Port and Tenant hereby release as of the date hereof, the Release Parcel from the Master Lease and as of the date hereof, the “**Premises**” under and as defined in the Master Lease will be adjusted to exclude the Release Parcel.
2. In accordance with DDA Section 18.3(b), Port and Tenant hereby release as of the date hereof, the lien of the DDA from the Release Parcel.
3. Other than the adjustment of the Premises and the partial release of the DDA as set forth in this Partial Release, all other terms and conditions of the Master Lease and DDA remain unchanged.

[Signature appears on following page J

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

Tenant

SEAWALL LOT 337 ASSOCIATES, LLC,
a Delaware limited liability company

By: Mission Rock Partners LLC,
its sole member

By: TSCE 2007 Mission Rock, L.L.C.
its administrative member

By: _____
Name: _____
Title: _____

Phase 1 Horizontal Developer

MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C.,
a Delaware limited liability company

By: SEAWALL LOT 337 ASSOCIATES, LLC,
a Delaware limited liability company,
its sole member

By: Mission Rock Partners LLC,
its sole member

By: TSCE 2007 Mission Rock, L.L.C.
its administrative member

By: _____
Name: _____
Title: _____

[Signatures must be notarized.]

Port

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION**

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Justin Bigelow
Deputy City Attorney

Port Commission Resolution No. ____ - ____, adopted on _____
Board of Supervisors Resolution No. ____ - ____, adopted on _____

Exhibit A-1

Legal Description of Release Parcel(s)

DRAFT TO BE UPDATED:

Parcel 1: Dr. Maya Angelou Way Paseo, identified as APN 8719B-001; and

Parcel 2: Bridgeview Way Paseo, identified as APN 8719A-007; and

Parcel 3: Channel Street Open Space, identified as APN 8719C-004; and

Parcel 4: Westerly portion of Toni Stone Crossing, identified as APN 8719B-003; and

Parcel 5: Middle portion of Toni Stone Crossing, identified as APN 8719A-009; and

Parcel 6: Easterly portion of Toni Stone Crossing, identified as APN 8719A-010; and

Parcel 7: Dr. Maya Angelou Way, identified as APN 8719C-002; and

Parcel 8: Bridgeview Way, identified as APN 8719D-001; and

Parcels 9-12: [Port and Developer defining at least four other areas to be removed from Master Lease:

China Basin Park,

Portion of Parcel I,

Bridgeview cul de sac, and

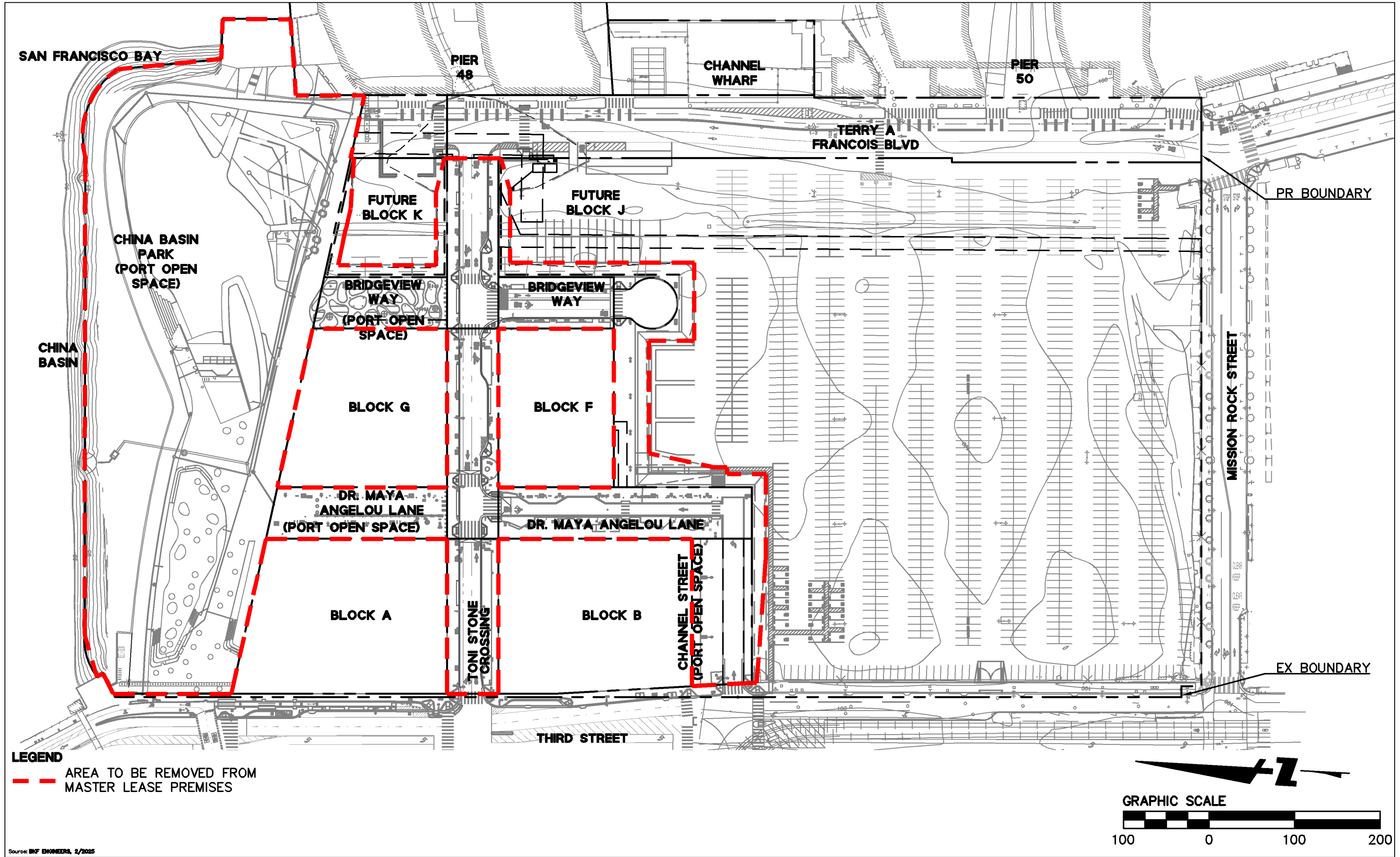
walkway along MR Commons. **MR to provide descriptions and drawings]**

in the City and County of San Francisco, State of California, together with any and all improvements and alterations thereto.

Exhibit A-2

Depiction of Release Parcel(s)

DRAWING NAME: \\BKF-s1\vol14\2025\050000\Mission Rock\ENR\Exhibit\25_02008 MasterLeaseExhibit.dwg
PLOT DATE: 05-09-25
PLOTTED BY: BKF



**MEMORANDUM OF UNDERSTANDING
REGARDING JURISDICTION, ACCEPTANCE, AND MAINTENANCE
OF PUBLIC IMPROVEMENTS AT THE MISSION ROCK SPECIAL USE DISTRICT**

This Memorandum of Understanding (“**MOU**”) dated for reference purposes as of _____, 2025, is made by and between the City and County of San Francisco, a municipal corporation (the “**City**”), acting by and through the Public Works Department (“**Public Works**”), the San Francisco Municipal Transportation Agency (“**SFMTA**”), the San Francisco Fire Department (“**SFFD**”), and the Public Utilities Commission (“**SFPUC**”, and, collectively with SFFD, Public Works and SFMTA, the “**Non-Port Departments**”) and the City, acting by and through the Port Commission (“**Port**” or “**Port Commission**”), collectively, the “**Parties**” and each a “**Party**”, with reference to the following facts:

A. Port and Seawall Lot 337 Associates, LLC, a Delaware limited liability company (“**Developer**”) executed that certain Disposition and Development Agreement dated for reference purposes as of August 15, 2018 (as amended and supplemented from time to time, the “**DDA**”), and that certain Lease No. L-16417, dated as of August 15, 2018 (as amended from time to time, the “**Master Lease**”) in connection with the development of the Mission Rock Special Use District (the “**Project Area**”). At the same time, the City and Developer entered into a Development Agreement that, among other things, determines what City laws, regulations, development impact fees, and processes apply to development of the Project Area (the “**DA**”).

B. The City, including Public Works, SFPUC, and SFMTA, and Port also entered into a Memorandum of Understanding Regarding Interagency Cooperation (Mission Rock Project at Seawall Lot 337 and Pier 48) dated for reference purposes as of August 15, 2018 (as amended and supplemented from time to time, the “**ICA**”) to facilitate implementation of development of the Project Area.

C. The Project Area is impressed with (1) the common law public trust for commerce, navigation, and fisheries (the “**Public Trust**”) and (2) the statutory trust imposed by Chapter 1333 of the Statutes of 1968 (as amended, the “**Burton Act**”) together with any additional restrictions on use and alienability created by that certain Agreement Relating to the Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco (the “**Burton Act Transfer Agreement**”) (such statutory trust referred to herein as the “**Burton Act Trust**” and, collectively with the Public Trust, the “**Trusts**”). The Burton Act designates Port as the trustee of the Trust Lands (“**Trustee**”).

D. The Project has been planned and designed, in consultation with the California State Lands Commission (“**State Lands**”) and in accordance with Senate Bill 815 (“**SB 815**”) (stats. 2007, ch. 660), as modified by Assembly Bill 2797 (“**AB 2797**”) (stats. 2016, ch. 529), to produce multiple public trust benefits. State Lands approved the Mission Rock Public Trust Study, and that approval with SB 815 and AB 2797, authorize the Port to lease all or any portion of the Site free from the Public Trust and the Burton Act Trust use requirements for a term not to exceed 75 years from the initial occupancy date of the improvements developed on the parcel, but not beyond December 31, 2105.

E. The Improvements (defined below) will be constructed primarily on property which is, and will continue to be, under the exclusive jurisdiction of Port pursuant to Appendix B of the City’s Charter (the “**Charter**”). The DDA, the DA, and the ICA are collectively referred to as the “**Transaction Documents**”.

F. The City, chiefly through Public Works, administers the land use and permitting requirements of the San Francisco Public Works Code, the subdivision requirements of the San Francisco Subdivision Code and Regulations, and the infrastructure requirements of the San Francisco Administrative Code.

G. The Charter grants the SFPUC exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City, as well as the real, personal and financial assets, that are under SFPUC's jurisdiction.

H. Consistent with the approved Sanitary Sewer System Master Plan, the Developer proposes a combined Water Treatment and Recycling System ("**WTRS**") plant and Sanitary Sewer Pump Station ("**SSPS**") to be co-located within a private development building located on planning Block B. This combined facility is needed to comply with Health Code Article 12C on a district scale and to avoid seeking variances from the SFPUC from its regulatory standards, respectively.

I. The City, chiefly through the SFMTA, designs and installs traffic control devices and bicycle parking, provides public transit service, and administers provisions of the San Francisco Transportation Code.

J. The SFFD regulates and enforces fire and life safety in the City. The SFFD reviews building permits for compliance with the fire safety provisions of the San Francisco Building Code, San Francisco Fire Code, and Port Building Code, and reviews subdivision maps for compliance with the fire safety provisions of the Subdivision Map Act, 2015 San Francisco Subdivision Regulations, and SFFD standards.

K. Pursuant to the DDA, Developer will construct throughout the Project Area roadways, utility and traffic facilities, and other appurtenances in the Right-of-Ways ("**Street Improvements**"), various improvements in land owned by Port and designated as Public Open Space in the Mission Rock Special Use District Design Controls, dated as of January 19, 2018, as it may be amended or supplemented ("**Open Space Lands**") (such improvements in Open Space Lands, the "**Open Space Improvements**"), and other improvements to land owned by Port (collectively, "**Improvements**").

L. The purpose of this MOU is to set out a framework for the jurisdiction over and maintenance and permitting of the Improvements, outline the procedures for implementing such framework, and provide for access to Improvements by the Parties and third parties.

M. The Parties have further memorialized the framework for responsibility for the Improvements in an Interdepartmental Master Encroachment Permit ("**IMEP**"), subject to approval by the Board of Supervisors, that includes maintenance agreements for Port encroachments and sidewalk maintenance in accordance with those certain Notices of Special Restrictions recorded against each parcel that were recorded on or about June 25, 2020.

N. The Public Trust doctrine, the Burton Act and the Burton Act Transfer Agreement require that all Harbor Fund revenues are expended for uses and purposes of statewide interest in fulfillment of the purpose of the Trusts. As Trustee, Port is charged with managing the state's granted public trust lands on behalf of the state for the benefit of all the people of California. As part of its fiduciary duty as Trustee, Port is required to take reasonable steps under the circumstances to take and keep control of and preserve trust property. Port cannot use the trust corpus for general municipal purposes or other purposes inconsistent with the Trusts. Ongoing expenditure by Port to City departments for services that support use and activities within Port jurisdiction, including the Project Area, are authorized so long as the services being provided are necessary and reasonable and carry-out Public Trust uses and purposes.

O. The Non-Port Departments are not responsible for the cost of design or construction of the Improvements. Developer has agreed in the DDA to pay for the initial cost of design and construction of the Improvements, including all Improvements intended to be accepted by the Non-Port Departments, and, pursuant to the DDA, is entitled to reimbursement from and to the extent of Project Payment Sources (as defined in the appendix to the DDA, the "**Appendix**"). Project Payment Sources include (1) Improvements Special Taxes (defined below), (2) a portion of funds generated within the IFD (defined below), (3) proceeds from the

lease of Port-owned Development Parcels (as defined in the Appendix), and (4) at Port's election in its sole discretion, Port Capital (as defined in the Appendix).

P. The City and Port have formed a community facilities district within the Project Area (the "**CFD**"), which CFD shall levy development special taxes, office special taxes, and shoreline special taxes (collectively, the "**Improvements Special Taxes**"), the funds of which will be used to reimburse the Developer for costs of the Improvements. The City and Port have also formed an infrastructure financing district (the "**IFD**"). A portion of the tax increment generated within sub-project areas of the IFD located in the Project Area will be used to reimburse the Developer for costs of the Improvements.

Q. Dues paid by a master association formed by the Developer ("**Association Dues**") and/or services special taxes levied by the CFD (the "**Services Special Taxes**") will fund all or a portion of the maintenance and operations of certain Improvements.

R. The Port periodically conducts nexus studies related to Non-Port Departments services. To comply with restrictions on Harbor Fund expenditures, the purpose of the nexus study is to document Port's expenditures on services by Non-Port Departments, the procedure for allocating costs to the Port, and the level of General Fund revenue generated by Port tenants. The Port will include in future nexus studies applicable costs and services related to this MOU and/or any increase in costs incurred by Non-Port Department for maintenance and operation of any Improvements that may be embedded in lightweight cellular concrete ("**LCC**") and the LCC itself (if subsequently authorized by a discretionary City action) or the maintenance and operation using LCC.

S. Each Party has authority pursuant to the City Charter and other applicable law. This MOU describes how the Parties are exercising their authority within the Project Area.

NOW, THEREFORE, the parties agree as follows:

1. Open Space and Right-of-Way Lands

1.1. Port Property. The City owns in fee, under Port jurisdiction, the real property underlying the open spaces and public right-of-ways within the Project Area ("**Port Property**"), as described in **Section 1.2** below. While Port intends that some Port Property will be offered for dedication by Port, and accepted and dedicated by the Board of Supervisors and under Public Works jurisdiction for liability and maintenance, other property will remain unaccepted by the Board of Supervisors. For convenience, unaccepted Port Property is referred to as "**Paseos**," and is shown in the attached **Exhibit B**.

1.2. City-Accepted Port Streets. Port Property that the Parties anticipate will be offered for dedication, and accepted and dedicated by the Board of Supervisors will be under Public Works jurisdiction if such streets comply with Public Works' specifications ("**City-Accepted Port Streets**"). The streets that the Parties anticipate will become City-Accepted Port Streets are depicted on **Exhibit C** attached hereto. The City-Accepted Port Streets, upon acceptance and public dedication, will function and be regulated like other accepted and dedicated City streets for purposes of permitting, traffic regulation, use by public utilities, and City departments, except as expressly stated in this MOU or in the San Francisco Municipal Code, as it may be amended.

1.3. Action by Board and Port Commission. No dedication for public use of City-Accepted Port Streets shall be considered complete without action of both the Port Commission and the Board of Supervisors.

2. Open Space Lands. Port intends to (i) dedicate the Open Space Lands to public use, (ii) designate such land for park and open space purposes only, and (iii) dedicate, designate, and accept Open Space Improvements, as recommended by Port staff, subject to action by the Port Commission, in its discretion as set out in the DDA, the Charter, and the Burton Act.

3. Improvements.

3.1. Maintenance Matrix. The Parties have identified which Improvements they anticipate will be in the jurisdiction of and/or maintained by the Non-Port Departments or by Port, as applicable, as set forth in the “**Maintenance Matrix**” attached to this MOU as ***Exhibit A***. The Parties do not intend for the Maintenance Matrix to bind the Parties to accept jurisdiction over the identified Improvements. Exclusive of any Improvements that have been publicly dedicated and designated to be within the jurisdiction of a specified Party by the Board of Supervisors and the Party’s Board or Commission, as may be applicable, the Maintenance Matrix may be updated if necessary to reflect agreements reached subsequent to the reference date, provided that material maintenance and liability obligations for any Improvement may not be changed without the prior written consent of the affected Party’s Executive Director, Director, or General Manager, or designee (“**Director**”), in said person’s reasonable discretion. The Parties may make non-material revisions to the Maintenance Matrix, as determined in consultation with the City Attorney’s Office, by mutual, written staff agreement and may by staff agreement substitute any such revised Maintenance Matrix for ***Exhibit A***. All such Maintenance Matrix revisions must show the date of the revision and identify the staff members approving the revision.

3.2. Offer of Improvements. The Parties intend that public improvement agreements or equivalent agreements concerning the construction and offer of Improvements will identify the Improvements that Developer will offer to the City.

3.3. Parties’ Roles. Except as may be set forth below and otherwise in this MOU, each Party’s responsibilities for accepted Improvements shall be consistent with such Party’s responsibilities for accepted improvements outside of Port jurisdiction:

(a) Public Works.

(i) *Maintenance and Liability.* For all City-Accepted Port Streets, upon acceptance, public dedication, designation for street and roadway purposes, and acceptance for maintenance and liability purposes by the Board of Supervisors, Public Works will be responsible for maintenance and liability of Street Improvements in the City-Accepted Port Streets to the same extent Public Works is responsible for maintenance and liability of the same in other dedicated right-of-ways in San Francisco.

(ii) *Permitting.* For all City-Accepted Port Streets, upon acceptance, public dedication, designation for street and roadway purposes, and acceptance for maintenance and liability purposes by the Board of Supervisors, Public Works shall be responsible for issuing regulatory permits and other permissions and approvals (“**Permit**”) required for construction, development, encroachment, or any other use of the subject lands and improvements in City-Accepted Port Streets in the same manner as other accepted City streets. Notwithstanding the forgoing, Public Works will endeavor to work with Port regarding Board of Supervisors authorizing legislation to grant Port the exclusive right to permit or license, as applicable, encroachments for café tables and chairs, merchandise displays, and readily moveable encroachments on the sidewalk in City-Accepted Port Streets (collectively “**Port Licensed Encroachments**”), in accordance with Section 3.3(e)(ii) below, and waives any permit fees for such encroachments.

(b) SFMTA. SFMTA shall be responsible for maintenance and liability of traffic signals, signage, and pavement markings, as well as parking enforcement in City-Accepted Port Streets. Port shall retain authority over the placement of parking meters, parking meter revenues, and regulatory authority regarding the parking and standing of motor vehicles for City-Accepted Port Streets and Paseos.

(c) SFPUC. Consistent with standard City practice, SFPUC shall be responsible for maintenance and liability for Improvements recommended for acceptance by

SFPUC, and accepted by the Board of Supervisors in City-Accepted Port Streets, and Open Space Lands, as set forth in the Maintenance Matrix.

(d) SFFD. SFFD has reviewed, and will continue to review, the Improvement Plans (as defined in the ICA), for compliance with SFFD requirements for Fire Safety Infrastructure (as defined in the ICA).

(e) Port.

(i) *Maintenance and Liability*. Except as otherwise stated in the Maintenance Matrix, Port shall be responsible for maintenance and liability for roadway paving, curb and crosswalk maintenance, and repair of Paseos and the Street Improvements in those Paseos, except for the Street Improvements described in subsections (b) and (c) above. Port shall be responsible for the maintenance and liability of the Open Space Lands. Port shall not be responsible for maintaining or repairing Street Improvements in the City-Accepted Port Streets, except as set forth in the IMEP and this MOU. The Non-Port Departments will not be responsible and Port will be responsible for maintenance and liability for sidewalks within City-Accepted Port Streets; the Non Port Departments acknowledge that Port has recorded Notices of Special Restrictions: Property Lessee's Responsibility to Maintain Safe Condition of Sidewalks and Sidewalk Areas Adjacent to Subject Real Property and intends to enter into a third-party management agreement to address sidewalk maintenance and liability, issues in accordance with Public Works Code Section 706 et seq. If Port is the proximate cause of damage to or injury to Street Improvements for which Port is not otherwise responsible, then Port shall be responsible for ensuring the repair of such damage. Port has no other obligation to maintain or repair SFMTA-accepted improvements (e.g., traffic signals, signage, and pavement markings) at any time.

(ii) *Permitting*. Port, acting by and through the Chief Harbor Engineer of Port (the "**Chief Harbor Engineer**"), shall issue any permit for the construction, development, encroachment, or any other use on Paseos, Open Space Lands and Development Parcels, and Improvements in those areas. In accordance with Section 3.3(a)(ii), Port shall issue permits and/or licenses for Port Licensed Encroachments, if any, in the same manner as Paseos, Open Space Lands and/or Development Parcels. Port shall be entitled to all fees for permits and/or licenses issued for Port Licensed Encroachments. For permits and/or licenses issued by Port for Port Licensed Encroachments, if any, Port shall comply, or cause the permittee or licensee to comply, with Public Works' requests for removal of Port Licensed Encroachments in connection with construction or other work to be performed in the City-Accepted Port Street.

(iii) *Proprietary Rights and Obligations*. Except for City-Accepted Port Streets, which are subject solely to City permitting processes (other than Port Licensed Encroachments, if applicable), Port shall continue to have the right to issue leases, licenses, and permits acting in its proprietary capacity with respect to property within the Project Area.

3.4. Permits or Contracts Issued by Parties in Project Area. Any permit or contract that requires permittee to indemnify any Party shall also require express indemnification of the City on terms consistent with the Transaction Documents to the extent Developer or its assigns is the indemnifying party. If a Party fails to require indemnification of another Party, said Party will allow an injured Party to pursue a claim for indemnification in its stead.

3.5. Funding for Maintenance of Improvements and Assignment of Maintenance Responsibility. As set forth in Recitals N through Q, the Parties contemplate various approaches to performing and funding the long-term maintenance of Improvements. The Maintenance Matrix and IMEP reflect the Parties' current intentions regarding these funding arrangements. Such funding arrangements may include, without limitation and in combination, as appropriate, the following:

(a) The Board of Supervisors or Port Commission, as applicable, may accept ownership of certain Improvements as set forth in the Maintenance Matrix ("**Publicly Owned**

Improvements”). The Non-Port Departments and/or Port may fund maintenance and bear liability or may enter an agreement with Developer or other third party to fund the maintenance and liability costs of Improvements, the source of which funding may be the Services Special Taxes or Association Dues, as contemplated in the Maintenance Matrix. Port may, at its option, be a party or a third-party beneficiary to such agreements or funding mechanisms initiated by the Non-Port Departments.

(b) For a period of 10 years after Acceptance, Port will provide CFD or IFD funds that are not pledged to reimburse or directly pay for Project Payment Obligations (as defined in the DDA) for remediation of Improvement failures. The Parties acknowledge that Exhibit 1 to Public Works Order No. 203637, as may be amended or replaced from time to time, defines “**LCC Performance Criteria**” and “**Failure**” of the LCC Infrastructure. Port agrees that if one or more Improvements suffer damage that can be reasonably demonstrated to be the result of a Failure of the LCC Infrastructure, then remediation shall include any repair or replacement that may be determined to be reasonably necessary by the Non-Port Departments. Requests for reimbursement may be submitted by the Non-Port Departments at any time during the 10-year period and will be reimbursed if and when the funds become available.

(c) For the period during which the City is receiving IFD or CFD funds from the Project Area, Port will manage its CFD and IFD capital project plans to ensure that funds are available for the payment of the incremental costs (the “**Incremental Maintenance Costs**”) of maintaining streets above LCC and utilities within LCC (“**LCC Streets**”) within the Project Area as compared to the typical San Francisco street infrastructure (“**Non-LCC Streets**”). Incremental Maintenance Costs shall include all costs necessitated by the maintenance of an LCC Street and the associated infrastructure that are greater than the cost of maintaining a Non-LCC Street or the associated infrastructure, as reasonably demonstrated by Non-Port Department staff. Subject to any change required by the City agencies after each review described at the end of this subsection, Port will ensure each requesting Non-Port Department’s Incremental Maintenance Costs are reimbursed.

The Port or its assignee intends to utilize a portion of the available Services Special Taxes and/or Park Lease revenues as they become available to reimburse each requesting Non-Port department’s Incremental Maintenance Costs. If available funds are insufficient to reimburse the applicable Non-Port Department’s Incremental Maintenance Costs during any applicable fiscal year, then Port will notify Non-Port Departments immediately, citing reasons for funding insufficiency and propose reasonable terms for reimbursement or agree to the applicable Non-Port Department’s terms of reimbursement no later than 90 days following notification. Every five years, or earlier as may be required, the City agencies will review the framework for calculating Incremental Maintenance Costs; information available from actual Incremental Cost expenditures incurred by Non-Port departments; and whether there continue to be Incremental Maintenance Costs in the Project Area and a continued need for Port to direct, or cause to be directed, use of funds as described through this agreement, to reimburse each requesting Non-Port department’s Incremental Maintenance Costs. City agencies may request a meeting to discuss the Incremental Maintenance Cost framework earlier than 5 years if one of the following occurs: 1) actual incremental costs incurred by City Departments are different than what were projected prior to executing this MOU, 2) a new phase receives an approved Final Subdivision Map that includes additional LCC Streets to be offered for dedication as future City-Accepted Port Street, 3) a Non-Port Department anticipates significant upcoming Incremental Maintenance Cost expenditures that Port must budget for, or 4) LCC is not performing as expected.

(d) If Developer elects that a third party, such as a commercial owners’ association, a master homeowners’ association, or a business improvement district (each an “**Association**”) should assume maintenance and liability responsibilities for Publicly Owned Improvements, and the Director of the affected City agency consents, the Port will direct the Developer to require the Association to enter into a maintenance agreement which (1) requires the Association to perform these obligations to the applicable Party’s satisfaction, (2) requires

any agreements creating the association to memorialize the requirement to perform the obligations, and (3) names both the City and the Port as beneficiaries.

3.6. Acceptance and Dedication of Improvements. In accordance with Section 4.6(b)(ii)(A) of the ICA, the Parties will diligently and expeditiously process acceptance requests and will introduce complete acceptance packages to the applicable acceptance body with a goal of final approval within six months after the date of Developer's submission of a complete request.

3.7. Unaccepted Improvements. The Parties may authorize Developer or other third parties to install Improvements ("**Unaccepted Improvements**") that encroach upon City-Accepted Port Streets, including on or in Improvements accepted by the City or otherwise dedicated to public use, following consent by Port staff and the Non-Port Departments with jurisdiction over the Improvements below, above, or affected by the Unaccepted Improvements. As to Unaccepted Improvements in City-Accepted Port Streets, the City may require Port to enter into a maintenance agreement that requires the owner to seek the Board of Supervisors' approval of a Major Encroachment Permit that allows the Unaccepted Improvement the revocable right to encroach on the right of way and sets out the owner's maintenance responsibilities (including funding therefor).

4. Access.

4.1. Port Lands. By this MOU, Port provides to the Non-Port Departments a license for construction, maintenance, and inspection of Street Improvements in Port Property and Open Space Improvements, if any on Open Space Lands in the Project Area controlled by Port, not subject to the Master Lease (collectively, "**Port Lands**").

4.2. Developer Lands. Port has entered into an amendment to the Master Lease pursuant to which the Developer granted the City access to Port Property and Open Space Lands that Developer controls pursuant to the Master Lease, for purposes of construction, maintenance, inspection, and if necessary public use before dedication and acceptance, in the event of Developer default.

5. Jurisdiction/Permitting Authority

5.1. Applicable Law. The Parties affirm that the Charter, the Port Code, the Port Building Code, the Port Harbor and Traffic Code, the Municipal Code of the City, including without limitation the Public Works Code, Planning Code, Transportation Code, Fire Code, and City Subdivision Code, and laws, regulations, and requirements of federal, state, Port and other City agencies, now in force or which may hereafter be in force, including laws relating to Hazardous Materials (defined in **Section 11.5** (Definitions) below) (collectively, "**Laws**"), apply throughout the Project Area. However, Port agrees that pursuant to this MOU, Port regulations and requirements and the Port Building Code do not apply to City-Accepted Port Streets. Port staff and City staff agree to cooperate in good faith to ensure all City requirements are implemented in a manner consistent with the Transaction Documents, to the extent applicable.

5.2. Delegation of Regulatory Control and Authority. Consistent with the ICA and Laws, and subject to reservations in **Sections 5.3** through **5.6**, Port hereby delegates (1) to the Non-Port Departments all of the regulatory control and authority, except for substantive regulation of parking and standing of motor vehicles as addressed in the Port Harbor Traffic Code (as it may be amended), and as otherwise referenced in this MOU, that it may hold concurrently with the City over City-Accepted Port Streets and improvements on City-Accepted Port Streets, and, (2) to the SFPUC, any and all of the regulatory control and authority for Improvements that are owned by the SFPUC in City-Accepted Port Streets, Paseos, and Open Space Lands, as applicable, for public use pursuant to **Sections 1** and **2** above; provided that Port does not delegate its rights and obligations as Trustee of the Public Trust or rights and obligations under the Transaction Documents; and provided further that such delegation shall take effect only upon the placement of such City-Accepted Port Streets or Paseos in the

applicable Non-Port Department's jurisdiction or the placement of such Improvements in the SFPUC's jurisdiction, and such delegation shall expire as to any Non-Port Department upon termination in accordance with **Sections 12 or 17** below.

5.3. Planning Code. This delegation does not alter Port's jurisdiction to administer portions of the Planning Code as provided in Planning Code Section 249.80.

5.4. Consistency Review. Port retains its responsibility for consistency review of initial construction of Improvements under Section 4 of the ICA.

5.5. Waivers. A Non-Port Department shall not grant any waiver of applicable Law in any manner inconsistent with such waivers granted outside of Port jurisdiction without the Port Director's prior written consent.

5.6. Public Trust Authority. Port retains all authority required to exercise its responsibilities as Trustee of the Trusts, as granted to it in the Burton Act and the Burton Act Transfer Agreement. As Trustee, Port's obligations and duties are

- (a) loyalty, care and full disclosure;
- (b) to keep clear and adequate records and accounts,
- (c) full disclosure;
- (d) to administer the trust solely in the interest of the beneficiaries;
- (e) to act impartially in managing trust property;
- (f) to not use or deal with trust property for its own profit or for any other purpose unconnected with the trust, and to not take part in a transaction in which the trustee has an interest adverse to the beneficiaries;
- (g) to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property;
- (h) to make the trust property productive under the circumstances and in furtherance of the purposes of the trust;
- (i) to keep the trust property separate from other property not subject to the trust and to see that the trust property is designated as property of the trust;
- (j) to take reasonable steps to enforce claims that are part of the trust property;
- (k) to take reasonable steps to defend actions that may result in a loss to the trust; and
- (l) to not delegate to others the performance of acts that the trustee can reasonably be required to perform and to not transfer the administration of the trust to a co-trustee. If a trustee has properly delegated a matter to an agent, the trustee has a duty to exercise direct supervision over the performance of the delegated matter.

5.7. Encroachment Permits. Public Works shall provide the Port with notice of any permits issued for minor encroachments on City-Accepted Port Streets.

6. SFPUC-Owned Utilities in Open Space Lands and Paseos; Emergency Repair.

6.1. Utility License Area for SFPUC-Owned Improvements. This MOU serves as notice of Port's restrictions on use of the Utility License Area (defined below), which restrictions are described in **Section 6.2** below. The Utility License Area and relevant restrictions shall be depicted on **Exhibit D** to this MOU. Upon completion of each phase of the development project, and after acceptance of the Improvements in such phase, the Parties shall amend this MOU and

update or replace **Exhibit D** with legal descriptions setting forth only those portions of Open Space Lands within which SFPUC-Owned Improvements are located, solely for SFPUC-owned Improvements in Open Space Lands, including a cumulative six-foot (6') no-build buffer measured three feet in each direction from the center or centerline of each SFPUC-owned Improvement (the "**Utility License Area**").

6.2. Restrictions on Use of Utility License Area. The following restrictions on the use of the Utility License Area shall remain in place until expiration or earlier termination of this MOU:

(a) Port may not plant or permit any trees or other vegetation in or on the Utility License Area, except in accordance with detailed plans consistent with the SFPUC's "Vegetation Management Policy" as may be amended from time to time.

(b) To prevent damage to the utility facilities, Port may not use or permit vehicles and equipment within the Utility License Area that exceed AASHTO H-20 traffic loading unless the ground surface above the Utility License Area has been designed to support higher traffic loads, such as the weight of emergency vehicles and/or for standard roadway vehicular loads.

(c) No earthwork may occur in the Utility License Area without submitting a written work plan to the SFPUC or other appropriate City agency pursuant to **Section 19** (Notice).

6.3. Work by SFPUC within Utility License Area. SFPUC will coordinate its work within the Utility License Area with Port in the same manner SFPUC coordinates its work with Public Works in other City streets, including any notice requirements and requirements to provide information on installed facilities (e.g., as-builts). SFPUC and its contractors shall not be required to obtain a Port permit. Port will coordinate with any other users of Paseos and the Utility License Area.

6.4. Emergency Repair Work within Utility License Area. SFPUC may make any repairs or changes to their Improvements in the Utility License Areas under emergency conditions that are determined to be necessary by SFPUC. The SFPUC will make reasonable efforts to provide subsequent written notification to the Chief Harbor Engineer or the Chief Harbor Engineer's designee within 48 hours of the event commencement. Public Works shall have no obligation to make any repairs under emergency conditions in the Utility License Area.

7. SFMTA-Owned Utilities in Open Space Lands and Paseos; Emergency Repair.

7.1. Utility License Area for SFMTA-Owned Improvements. Port acknowledges the presence of SFMTA-owned Improvements that will be located on Open Space Lands and Paseos as described on **Exhibit E**, attached hereto (the "**SFMTA Improvements**"). Upon completion of each phase of the development project, and after acceptance of the Improvements in such phase, the Parties shall amend or substitute **Exhibit E** to this MOU to identify the locations of all SFMTA Improvements located in Open Space Lands and Paseos.

7.2. Work by SFMTA on SFMTA Improvements. SFMTA, or its agents, will coordinate its work on the SFMTA Improvements with Port in the same manner SFMTA coordinates its work with Public Works in other City streets, including any notice requirements and requirements to provide information on installed facilities (e.g., as-builts). SFMTA and its contractors shall not be required to obtain a Port permit. Port will coordinate with any other users of Open Space Lands and Paseos.

7.3. Emergency Repair Work on SFMTA Improvements. SFMTA may make any repairs or changes to SFMTA Improvements under emergency conditions that are determined to be necessary by SFMTA. The SFMTA will make reasonable efforts to provide subsequent written notification to the Chief Harbor Engineer or the Chief Harbor Engineer's designee within

48 hours of the event commencement. Public Works shall have no obligation to make any repairs under emergency conditions to the SFMTA Improvements or surrounding areas.

8. Public Works-Owned Infrastructure in Open Space Lands and Paseos; Emergency Repair.

8.1. License Area for Public Works -Owned Improvements. Port acknowledges the presence of Public Works-owned Improvements that will be located on Open Space Lands as described on ***Exhibit G***, attached hereto (the “**Public Works Improvements**”). Upon completion of each phase of the development project, and after acceptance of the Improvements in such phase, the Parties shall amend or substitute ***Exhibit-G*** to this MOU to identify the locations of all Public Works Improvements located in Open Space Lands.

8.2. Work by Public Works on Public Works Improvements. Public Works, or its agents, will coordinate its work on the Public Works Improvements with Port in the same manner Public Works coordinates its work with non-Port Departments in City streets, including any notice requirements and requirements to provide information on installed facilities (e.g., as-builts). Public Works and its contractors shall not be required to obtain a Port permit. Port will coordinate with any other users of Open Space Lands and Paseos.

9. Emergency Vehicle Access Area

9.1. Emergency Vehicle Access Area. This MOU identifies those parcels of Paseos and Open Space Lands within which emergency vehicle access will be located, which Paseos and Open Space Lands are described on ***Exhibit D***. This MOU serves as notice that the Emergency Vehicle Access Areas (defined below) may be used by licensed emergency vehicles and are to be available for emergency vehicle access at all times. Upon completion of each phase of the development project, and after acceptance of the Paseos and Open Space Lands in such phase, the Parties shall amend this MOU and update or replace ***Exhibit D*** with legal descriptions setting forth only those portions of Paseos and Open Space Lands within which emergency vehicle access is located (each, an “**Emergency Vehicle Access Area**” and collectively, the “**Emergency Vehicle Access Areas**”). Port is responsible for keeping the Emergency Vehicle Access Areas in a level, readily accessible, and unobstructed condition for emergency access. This obligation may be assigned to Port’s tenants or licensees.

9.2. Restrictions on Use of Emergency Vehicle Access Area. The following restrictions on the use of the Emergency Vehicle Access Areas shall remain in place until otherwise terminated in accordance with this MOU:

(a) Port may use the Emergency Vehicle Access Area in any way that does not interfere with emergency vehicle access. No new permanent structure or other permanent improvement shall be constructed or maintained on the Emergency Vehicle Access Areas, except as approved by the San Francisco Fire Marshal or the San Francisco Fire Marshal’s designee if such approval is required under the provisions of applicable Laws.

10. Soil Management Plan. The Parties acknowledge the following:

10.1. Mission Rock Soil Management and Dust Control Plan. There is a Soil Management Plan (“**Mission Rock SMP**”) and a Dust Control Plan (“**Mission Rock DCP**”) for the Project Area because of existing Hazardous Materials contamination in soils. The Soil Management Plan dated October 18, 2019 and prepared by Ramboll US Corporation and the Dust Control Plan dated November 1, 2019 and prepared by Ramboll US Corporation for the Project Area was approved by Port, Department of Public Health and Department of Toxic Substances Control. The Mission Rock SMP establishes measures that must be followed by anyone performing management, maintenance, and construction within the Project Area to mitigate potential health risks related to contaminated soil in the Project Area. The requirements generally serve to minimize site users’ exposure to soil.

10.2. Compliance with SMP and DCP. All activities taking place in any portion of the Project Area that is subject to the Mission Rock SMP and the Mission Rock DCP must be conducted in compliance with the Mission Rock SMP and the Mission Rock DCP, as each may be amended or supplemented from time to time.

11. Hazardous Materials.

11.1. Handling. Each Party shall Handle all Hazardous Materials introduced or disturbed in Open Space Lands or Paseos during the Term of this MOU in compliance with all Environmental Laws. Non-Port Departments shall not be responsible for the safe Handling of Hazardous Materials Released on the Project Area solely by Developer or Port or their agents, except to the extent a Non-Port Department disturbs or exacerbates such Hazardous Materials.

11.2. Removal of Hazardous Materials. Prior to termination of this MOU, each responsible Party shall remove any and all Hazardous Materials introduced or released in, on, under or about Open Space Lands or Paseos by said Party or its agents during the term of this MOU and shall Remediate or dispose of any Hazardous Materials produced as a result of their activities within the Project Area, to the extent consistent with their standard practices and required by applicable Laws. All costs of storage, shipping and disposal of extracted soils and groundwater shall be the responsibility of the responsible Party including, without limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests.

11.3. Notification. In order to satisfy Port's reporting obligations under the Mission Rock SMP:

(a) Each Non-Port Department shall notify Port upon the issuance of a permit issued by the SF Department of Public Health and the receipt of a hazardous waste generator identification number issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency to itself or its agents.

(b) Each Non-Port Department shall immediately notify Port in writing of any release or discharge of any Hazardous Materials, if the release is in quantities that would be required under Environmental Laws to be reported to a governmental or regulatory agency.

(c) Each Non-Port Department shall immediately notify Port in writing of, and shall contemporaneously provide Port with a copy of:

(i) Any written notice of release of Hazardous Materials in or on the Project Area that is provided by a Party or its agents to a governmental or regulatory other than Port;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by a Non-Port Department or its agents from any governmental or regulatory agency including any City agency other than Port; and

(iii) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency, including any City agency other than Port, against a Non-Port Department or its agents and that relates to the release or discharge of Hazardous Material on or from the Project Area.

11.4. SWPPP. Each Party shall comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting.

11.5. Definitions. For purposes of this MOU:

“**Hazardous Material**” means any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property, including, but not limited to, all of those materials, wastes and substances designated as hazardous, toxic, pollutant or contaminant by the United States Environmental Protection Agency, the City and County of San Francisco, the United States Department of Labor, the United States Department of Transportation, any department or agency of the California Environmental Protection Agency or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

“**Environmental Laws**” means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Project Area, including, without limitation, soil, air, bay water and groundwater conditions.

“**Handle**” means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. “**Handling**” has a correlative meaning.

“**Release**” means any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material). Claims. The Parties hereto agree as a matter of principle that any third-party claim shall be handled by the Party that under this MOU has the responsibility for the operation or maintenance of that portion of the property which gave rise to the claim

12. Default. Failure of any Party to perform any provision of this MOU, if not cured within ninety (90) calendar days after a written notice has been given by the non-defaulting affected Party (the “**Affected Party**”), shall constitute a default by the Party which failed to perform (the “**Defaulting Party**”). If the default cannot be reasonably cured within ninety (90) calendar days, the Defaulting Party shall not be in default of this MOU if it commences to cure the failure within such 90-day period and diligently and in good faith continues to cure the failure. If the Defaulting Party fails to cure a default, the Affected Party shall avail itself of the dispute resolution procedures in **Section 13** (Dispute Resolution) below, but if that process is not successful, the Affected Party may terminate this MOU as to the Defaulting Party; provided, however, that this MOU will remain in full force and effect until the Parties have entered into a new memorandum of understanding to replace this MOU.

13. Dispute Resolution. In the case of a dispute between the Parties, the appropriate staff person from Port and the applicable Non-Port Department, starting from level 1 below, shall in good faith meet with each other to resolve the contested issues. If staff from level 1 are unable to resolve the dispute, the matter shall be forwarded to levels 2, 3, and 4 as applicable (or their designated staff) to meet in good faith with each other to resolve the contested issues.

Escalation Ladder:

Level	1	2	3	4
SF Port Contact	Senior Property Manager, Southern Waterfront (415) 274-0400	Assistant Deputy Director, Real Estate (415) 274-0400	Deputy Director, Real Estate and Development (415) 274-0400	Executive Director (415) 274-0400

SFPUC Contact	Assistant Real Estate Director (415) 487-5210	Real Estate Director (415) 487-5210	Deputy General Manager (415) 554-3155	General Manager (415) 554-3155
SF Public Works Contact	BSM Bureau Manager (628) 271-2033	BSM Bureau Head (628) 271-2662	City Engineer (628) 271-2772	Director (628) 271-3078
SFMTA Contact	Budget Lead (415) 701-4671	Manager, Budget and Analysis (415) 646-2517	Chief Financial Officer (415) 579-9704	Director of Transportation (415) 646-2522
SFFD Contact	Port Fire Marshal (415) 274-0565	Port Fire Marshal (415) 274-0565	Asst. Fire Marshal (415) 558-3300	Asst. Deputy Chief S.F. Fire Marshal (415) 558-3300

14. Effective Date. This MOU shall be effective as of the date of the signature of the last party to execute it (the “**Effective Date**”).

15. Mineral Reservation. The State of California (“**State**”), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Trust Lands and the Parties acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to for any claims arising from the State’s exercise of its rights.

16. Amendment. This MOU may be amended or otherwise modified only in writing signed and acknowledged by all Parties, provided that changes to the Maintenance Matrix, as discussed in **Section 3.1** above, may be amended or modified by written agreement between the affected Parties.

17. Term. The Term shall begin upon the Effective Date, and shall end, for any Non-Port Department or Port, upon delivery of not less than 30 days written notice of termination to all Parties. Before sending a notice of termination, a Party will first send written notice of any provisions that it seeks to alter, and agrees to meet and confer with the affected Parties as may be needed from the date such notice is delivered to the date of termination. No termination shall be effective until the Parties agree to and enter into a new memorandum of understanding, unless the City no longer owns the Improvements by and through the terminating Party in the Project Area.

18. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

19. Notice. Any notice, consent, or approval given under this MOU shall be in writing and given by delivering the notice in person, by inter-office mail, commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. Except as otherwise permitted pursuant to this MOU, the Parties will provide at least five (5) business days’ prior written notice of each and all of the planned construction activities of any Party on the Paseos to the other Parties at the address(es) specified in this Section. Such notice will include plans and specifications for the relevant construction activities.

Port:	Executive Director Re: Mission Rock SUD Project Port of San Francisco Pier 1 The Embarcadero San Francisco, CA 94111
with copy to:	General Counsel Re: Mission Rock SUD Project City Attorney, City and County of San Francisco Port of San Francisco Pier 1 The Embarcadero San Francisco, CA 94111
The Non-Port Departments:	Director Re: Mission Rock SUD Project Department of Public Works City and County of San Francisco 49 South Van Ness Avenue, Suite 1600 San Francisco, California 94103 General Manager Re: Mission Rock SUD Project San Francisco Public Utilities Commission 525 Golden Gate Avenue San Francisco, CA 94102 Director of Transportation Re: Mission Rock SUD Project San Francisco Municipal Transportation Agency One South Van Ness Avenue, 7th Floor San Francisco, CA 94103 Port Fire Marshal Port of San Francisco Re: Mission Rock SUD Project Pier 1 The Embarcadero San Francisco, CA 94111
and copies to:	Attention: PW General Counsel Attention: SFMTA General Counsel Attention: SFPUC General Counsel City Attorney, City and County of San Francisco

	Room 234, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682
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Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this MOU shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

20. Exclusive Benefit of Parties. The provisions of this MOU are for the exclusive benefit of the Parties, and not for the benefit of, nor give rise to any claim or cause of action by, any other person, and this MOU shall not be deemed to have conferred any rights upon any person except the Parties.

21. Severability. If any provision of this MOU shall to any extent be invalid or unenforceable, the remainder of this MOU (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this MOU, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

22. Entire Agreement. This MOU, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties on the subject matter hereof, and this MOU supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter of this MOU.

[REMAINDER OF PAGE LEFT BLANK]

Last Updated 2-7-2025

IN WITNESS WHEREOF, this MOU has been executed by the parties as of the date first set forth above.

The Non-Port Departments:

CITY AND COUNTY OF SAN FRANCISCO,
a charter City and County

By: _____
Carla Short
Director of Public Works

By: _____
Dennis J. Herrera
SFPUC General Manager

By: _____
Jeffrey Tumlin
Director of Transportation

By: _____
Jeanine Nicholson
Chief of Fire Department

Port:

PORT OF SAN FRANCISCO

By: _____
Elaine Forbes
Executive Director

Mission Rock JMOU Exhibits

Exhibit A Maintenance Matrix

LEGEND

- Yellow: Private/Port Ownership-Private Port Maintenance
- Blue: City-Ownership-Private/Port Maintenance
- Green: City Ownership and Maintenance
- Orange: LCC Incremental Cost
- Pink: Private Entity Ownership and Maintenance

Mayor ED 17-02 Priority Permit

Mission Rock Acceptance and Maintenance Matrix

Last Updated2/5/25

Notes:

- The Mission Rock Acceptance and Maintenance Matrix is intended to cover all project phases and shall be revised prior to acceptance of each subsequent phase. The current version of the Acceptance and Maintenance Matrix covers work completed through Phase 1.
- The tentative map (included below for reference) included two placeholder street names. During Phase 1, the Project sponsor worked with the Public Works Bureau of Street Use and Mapping to establish new permanent names for these rights-of-way. The ROW labeled "Shared Public Way" on the Mission Rock Tentative Map was renamed "Dr. Maya Angelou Lane". The right-of-way labeled "Exposition Street" was renamed "Toni Stone Crossing". The revised street names are used in the table below.
- The "Permitting Authority" column conveys the agency responsible for permitting assets during phase construction. The column does not signify agency with post-acceptance jurisdictional oversight. For example, Public Works was listed as Permitting Authority for streetscape signage approved under the SIP, but future signage modifications implemented by SFMTA do not need Public Works' approval.

Document Key

- JMOU = Memorandum of Understanding Regarding Jurisdiction, Acceptance, and Maintenance of Public Improvements at The Mission Rock Special Use District
- IMEP = Interagency Master Encroachment Permit issued by Public Works to the Port. The Port intends to assign its maintenance obligations under the IMEP to the Mission Rock HOA. (Permit Number25ME-00002)
- GMEP = Master Encroachment Permit issued by Public Works to Mission Rock Utilities (Permit Number 21ME-00004)
- PIA = Mission Rock Phase 1 Public Improvement Agreement, (Effective Date: June 20, 2020)

Row	Specific Improvement	General Description	Permitting Authority	Improvement Ownership Party	Party Having Liability	Party Responsible for Maintenance	Instrument Memorializing Maintenance Rights & Duties	Responsible Party for Providing Funding Source for Maintenance	Additional Notes	Permit
1.	<i>Real Property underlying Right-of-Way</i>	<i>Real property underneath public streets, as depicted. Improvements to be handled per entries below.</i>	N/A	N/A	Per improvement entries below	Per improvement entries below	Per improvement entries below	Per improvement entries below	• Fee title to land to remain under Port ownership as Trustee of Public Trust Lands.	Base SIP Permit (Phase 1)
	Lightweight Cellular Concrete (LCC) in Public Right-of-Way (see attached Tentative Map page which shows "Public Right of Ways" and Street Segments Anticipated to be Accepted by SF Public Works)									
2.	<i>Lightweight Cellular Concrete (LCC) Fill (in Public Right-of-Way)</i>	<i>Lightweight cellular concrete used to raise grades and mitigate consolidation settlement, including geotechnical fabric between the LCC and aggregate base above.</i>	Public Works	Public Works	Public Works.	Public Works Future Excavators (City Agency or 3 rd Party) responsible for restoring LCC per requirements of PW Order XXXXXX	JMOU COAs on Tentative Map	Public Works. Port to pay for incremental costs to City Agencies for increased cost to trench and repair roadway due to LCC. Refer to JMOU	<ul style="list-style-type: none">Subject to conditions per the Tentative Map and Orders 202368, 203189, 203636, 203637, 203638, 205087, 207782.PW responsible for replacement of LCC as needed in connection with roadway repair/reconstruction work.Subject to additional conditions per the Tentative Map and Orders 202368, 203189, 203636, 203637, 203638, 205087, 207782).Public Works will only maintain and have liability of LCC in public rights-of-way from curb to curb. Fronting property owner is responsible for repairing of sidewalks which include repairs to underlying LCC if necessary.Developer to conduct monitoring and provide warranties described in Tentative Map Conditions of Approval and PW Orders listed above. Monitoring equipment permitted under Major Encroachment Permit Number 25ME-00003.Refer to JMOU for LCC Incremental Cost procedures.	Phase 1 Base SIP Permit IB8 (Phase 1 SIP Permit) (see trench sections)

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Mayor ED 17-02 Priority Permit

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									<div>Backfilling Notes:</div> <ul style="list-style-type: none">Lightweight cellular concrete to be used as backfill in utility trenches, except where other materials are used in project plans/specifications. Typical bedding and pipe zone backfill for SFPUC utilities.Developer to perform LCC backfill on behalf of City and Port during initial 2-year LCC warranty period per PIA amendment.Future Excavators (City Agency or 3rd Party) responsible for restoring LCC per requirements of PW Order XXXXXXPort to manage City contract w/ LCC contractor (either using PW JOC process, sole source contract or other contracting method). Port will make LCC contract available to City agencies as needed.	
3.	Temporary LCC Edge Protection and Barrier Wall for Fall Protection	Concrete walls or sloped edge protection constructed with LCC and soil fill to cover exposed face of LCC and barrier wall to provide fall protection from elevated streets to existing grade at future building and open space parcels.	Public Works (berms shown in SIP drawings) Port (ramp and staircase allowing access across berm to Lot A) near southern terminus of DMA	Port	Port	Port	Port/Master Developer Other Open Space License/Agreement	Port*	<ul style="list-style-type: none">LCC edge protection to be Port-owned improvement on Port property.Wall for fall protection may be installed above edge protection.MEP may be required for temporary tiebacks in ROW.	Base SIP Permit (Phase 1) Separate Port Permit (Permit number: B-2023-0253) for Ramp and Staircase providing access to Lot A
4.	LCC Perforated Drains for Utility Vaults and Structural Soils in Tree Wells	Perforated drainage system in public right-of-way to drain structural soils and utility vaults where storm water cannot drain through LCC.	Public Works	Port*	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">In public right-of-way for draining structural soils in tree wells.	Base Phase 1 SIP Permit IB4 to Phase 1 SIP Permit
	Components of Public Rights-of-Way									
5.	Standard Roadway (pavement, curb and gutter)	City standard roadway including base paving, asphalt concrete wearing surface, curb and gutter (including mountable and street-facing curb and gutter on cycle track separators on Bridgeview Way)	Public Works	Public Works	Public Works, subject to Public Works Code Section 706, and MOU between Public Works and SFMTA	Public Works	JMOU	Public Works	<ul style="list-style-type: none">Utility owner owns trench materials and its maintenance.SFMTA will maintain striping.Street sweeping performed by Public Works.Public Works to provide life cycle pavement rehabilitation and other maintenance.	Base SIP Permit (Phase 1)

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6.	Standard Sidewalk Corner including curb ramps	Corner curb returns, curb ramps including the wings, sidewalk area at corners between extensions of the adjacent property lines, sidewalk bulb-outs at corners within extensions of property lines.	Public Works	Public Works	Public Works	Public Works	JMOU	Public Works		Base SIP Permit (Phase 1)
7.	Non-Standard Roadway Treatments	Non-standard treatments, including but not limited to non-standard detectable warning pavement; flush curbs; and valley gutters; raised crosswalks; or other non-standard materials in the ROW.	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">If non-standard features, City will not accept for maintenance and liability purposes.In Phase 1, this applies to Dr. Maya Angelou WayFuture Phases may include Terry Francois Boulevard and possibly other streets as well.CFD and/or Port to pay capital and maintenance costs above those for standard City streets.Public Works to issue IMEP to Port as permitteeIn areas with non-standard surface paving, City may restore non-standard surface paving with standard surface paving, Port will then replace standard paving with non-standard paving after City project is completed per Port's IMEP obligations.Street sweeping will be the responsibility and financial obligation of the Port*.Street sweeping on curbless streets (e.g. DMA) to be performed by the Port*The street sweeping program must meet requirements of the MS4 permit and be approved by the SFPUC prior to acceptance of the street.	IB7 (Phase 1 SIP Permit)
8.	Non-Standard Roadway Paving	Decorative paving in the roadway including monolithic concrete paving, unit pavers, or other paving not included in the Public Works Standard Paving Palette	Port	Port*	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Non-standard Phase 1 paving includes banded concrete paving in, Dr. Maya Angelou Way, Special paving surrounding the Toni Stone statue, and unit pavers in Bridgeview way furnishing zone.	Base SIP Permit (Phase 1) IB7
9.	Non-Standard curb and railing related to PG&E Manhole sited in the 3 rd Street Curb Line fronting China Basin Park	Non-standard assets include a segment that narrows the sidewalk as it wraps around the manhole and a railing preventing pedestrians from tripping due to the non-standard curb geometry	Public Works	Port	Port	Port	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Port and MRP to reevaluate this condition in Phase 2 to see if manhole can be relocated allowing the curb to be straightened and the railing to be removed	
10.	Sidewalks and Driveways	City standard concrete sidewalk thoroughway and driveways	Public Works	Public Works	Port	Port*	JMOU BOS Ordinance Publicly Dedicating Sidewalk	MASTER ASSOCIATION (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">NSRs on each Phase 1 Parcel, and language in the IMEP require fronting property owners to maintain their fronting sidewalks (effectively applying PW code 706).	Base SIP Permit (Phase 1)
11.	Non-Standard Sidewalk Corners at Dr. Maya Angelou Way and Toni Stone Crossing	Non-standard corner curb returns, sidewalk area at corners between extensions of the adjacent property lines, sidewalk bulb-outs at corners within extensions of property lines. Includes	Public Works	Public Works	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD		Base SIP Permit (Phase 1)

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		<i>entire curb and gutter section within extensions of property lines</i>								
12.	<i>Curb Ramps within Non-Standard Sidewalk Corners at Dr. Maya Angelou Way and Toni Stone Crossing</i>	<i>Curb ramps including wings within non-standard curb returns/sidewalk corners.</i>	Public Works	Public Works	Public Works	Public Works	JMOU	Public Works	<ul style="list-style-type: none">Curb Ramps to comply with City Curb Ramp Standards.	Base SIP Permit (Phase 1)
13.	<i>Sidewalk Street Life Zone</i>	<i>Sidewalk streetscape zone including pavers, landscape, irrigation, intermediate curbs and mid-block bulb-outs, decorative concrete paving not listed within the Public Works Standard Material Palette.</i>	Public Works	Port	Port	Port*	JMOU and IMEP for non-standard treatments/Sidewalk Landscape Permit under SF Public Works Code Section 810B for landscaping; Recorded NSR obliges maintenance by owners of vertical improvements and leases; Port contracting maintenance through Paseo Management Agreement.	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	See Row 2 regarding ownership of LCC; non-standard (superficial) improvements owned by Port with maintenance performed Developer affiliate under Paseo Management Agreement, with maintenance responsibility assigned to owner of vertical improvements and leases via recorded NSR.	IB7 (Phase 1 SIP Permit)
14.	<i>Sidewalk Street Life Zone - Seating</i>	<i>This includes benches or other seating furniture within public rights-of-way</i>	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">City will not accept benches	Base SIP Permit (Phase 1)
15.	<i>Street Trees</i>	<i>Stret trees planted in the sidewalk furnishing zone on 3rd Street and streets internal to the project</i>	Public Works	Public Works	Public Works	Public Works	JMOU, City Policy	Public Works Operating Funds	<ul style="list-style-type: none">Trees to be maintained per City Standards. Standards can be obtained from Public Works-Bureau of Urban ForestryUnder Voluntary Agreement allowed under Charter 16.129(c), Port or Master Association may chose to maintain trees in the future.	Base SIP Permit IB 7
16.	<i>Street Life Zone – Understory Plantings, and Tree Grates</i>	<i>Understory plantings and tree appurtenances such as tree grates within the sidewalk landscape zone, fronting private property.</i>	Public Works	Port	Port	Port*	JMOU and Voluntary Agreement between Developer and Public Works under Charter 16.129(c)	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none"><i>Port's maintenance obligations Include tree grates on Mission Rock's 3rd Street frontage and streets internal to the Phase 1 SIP area.</i>	Base SIP Permit (Phase 1) Some small modifications in IB7 (Phase 1 SIP Permit)

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17.	Standard Bike Lanes, Cycle Tracks	<div>Class II or Class III bike facilities in the roadway, including but not limited to pavement and striping.</div> <div>Class I or Class IV Cycle Track bike facilities in the public right-of-way, including but not limited to pavement, delineators, curbs and gutters facing cycle track, signing, striping, and median separators up to back of curb adjacent to vehicular roadway.</div>	Public Works	SFMTA	SFMTA	SFMTA	JMOU	SFMTA	<ul style="list-style-type: none">Per standard MOU between SFPW and SFMTA, SFMTA will maintain striping, soft hit posts. Public Works will restore/maintain the underlying roadway paving of streets paved with standard paving that have bike facilities 2" raised cycle track on Bridgeview Way in accordance with MOU between SFMTA and SFPW.Port will restore/maintain the underlying roadway paving of streets paved with non-standard paving that have bike facilities.Per existing MOU between Public Works and SFMTA, Public Works will maintain the mountable curb separating the raised cycle track from the adjacent roadway on Bridgeview Street.	Base SIP Permit (Phase 1) PHASE 1 SIP PERMIT IB2
18.	City Standard Trash/Recycling Receptacles	Trash and/or Recycling Receptacles per City Standards	Public Works	Public Works	Public Works	Public Works	JMOU	Public Works	<ul style="list-style-type: none">City through its contract with Recology responsible for collecting trash and recycling from trash receptacles in the public right-of-way.	Base SIP Permit (Phase 1)
19.	Custom Trash/Recycling Receptacles	Any trash or recycling receptacles which does not meet City standards	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">City will not accept custom receptacles; other entity will need to maintain and be responsible for collecting trash and recycling from receptacles in the public right-of-way.City through its contract with Recology responsible for collecting trash and recycling from trash receptacles in the public right-of-way.	Base SIP Permit (Phase 1)
20.	Streetlight Protection Elements	Stone Blocks installed on Dr. Maya Angelou Way used to protect streetlights from collisions from adjacent vehicular traffic various	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Port will be responsible for repair and replacement of stone blocks due to damage or life cycle degradation and restoring stone blocks if removed for utility excavations by City Departments.3rd Party Excavators required to replace removed or damaged bollards in kind.	IB7 (Phase 1 SIP Permit)
21.	City Standard Bike Racks	SFMTA standard bike racks	Public Works approval with signoff from SFMTA	SFMTA	SFMTA	SFMTA	JMOU	SFMTA	<ul style="list-style-type: none">SFMTA will be responsible for replacing bike racks in the event of knockdown/damage.Public Works will restore/maintain the underlying sidewalk or roadway paving of streets paved with standard paving that have bike racks if required.Port will restore/maintain the underlying roadway paving of sidewalk or roadway paved with non-standard paving that have bike racks.	Base SIP Permit (Phase 1)
22.	Non-Standard Bike Rack (N/A Phase 1)	SFMTA approved non-standard bike rack	Public Works approval with signoff from SFMTA	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Unless owned by SFMTA, these facilities will be owned and maintained by Port.Subject to Port approvalPhase 1 does not have non-standard bike racks	NA (Phase 1)
23.	Non-Standard Roadway Signage	Any additional signage for wayfinding, interpretive, art, etc. that are not traffic control devices; traffic control signs not meeting SFMTA design standards; and	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Non-standard signage design subject to Port approvalNote: The Port or it's agent will need to seek SFPUC approval through the SFPUC Pole Use Program for any wayfinding signage attached to SFPUC-owned poles.	PHASE 1 SIP PERMIT IB11

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		<i>any additional signage for interpretive, wayfinding, placemaking, or art</i>							Contact SLEngineering@sfwater.org (will soon change to ...sfpuc.org)	
24.	<i>Standard Streetlights in Public Right-of-Way</i>	<i>SFPUC standard streetlights, roadway lighting and pedestrian lighting, including poles, luminaires, pull-boxes, and conduit</i>	Public Works with signoff from SFPUC	SFPUC	SFPUC	SFPUC	JMOU	SFPUC	<ul style="list-style-type: none">Includes roadway lighting and pedestrian lighting that are added to the SFPUC’s catalog.This includes Caltrans mast arm Poles and City-standard streetlight poles on 3rd StreetPhase 1 has Port-owned streetlights in Channel Street.	PHASE 1 SIP PERMIT IB2 IB13
25.	<i>Standard Roadway Signage and Striping</i>	<i>Traffic Routing signage and striping per State and Federal Guidelines, including but not limited to stop signs, speed limit signs, travel lane striping and crosswalk striping</i>	Public Works approval with signoff from SFMTA	SFMTA	SFMTA	SFMTA	JMOU	SFMTA	<ul style="list-style-type: none">SFMTA is not required to pull permits or obtain approval from SFPW to install, maintain roadway striping or signage.Port and MTA to coordinate on curb painting in City-accepted Port streets per MOU between Port and SFTMA	PHASE 1 SIP PERMIT IB2 (some minor tweaks in PHASE 1 SIP PERMIT PHASE 1 SIP PERMIT IB11)
26.	<i>Stone Columns</i>	<i>Stone columns installed under the ROW used as ground improvements and soil stabilization</i>	Port	Port	Port	Port	Port-Issued Phase 1 Ground Improvements Permits	Port	<ul style="list-style-type: none">No ongoing maintenance anticipated for stone columns. Maintenance may be needed after a major seismic event.	Base SIP Permit (Phase 1)
27.	<i>Street Rooms and/or similar sculptural Public Art Installations in Public Right-of-Way</i>	<i>Permanent sculptural art, and/or urban design installations intended to activate public open spaces and foster human interaction. Artwork typically includes seating among other features.</i>	Public Works	Port	Port*	Port*	JMOU & IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Phase 1 Includes three street rooms/sculptures on the DMA Shared Street: “Lounge” by 100 Architects, “Pop Rocks” by Terrain Work, and “Shared Table” by Oyler Wu. Phase 1 also includes a sculpture of Toni Stone on Toni Stone Crossing by artist Dana King.	PHASE 1 SIP PERMIT PHASE 1 SIP PERMIT IB10
28.	<i>Deepened curb</i>	<i>Non-City Standard reinforced curb sited adjacent to planting areas in the public ROW.</i>	Public Works	Port	Port	Port	JMOU and IMEP	Public Works – standard curb repair costs Port – Incremental Costs (if available)	Per IMEP Port to accept ownership, liability and maintenance of deepened curbs.	IB7 (Phase 1 SIP Permit)

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29.	<i>Bollards in Dedicated ROW (N/A Phase 1)</i>	<i>Potentially Includes fixed, retractable, and removeable bollards.</i>	Public Works	Port*	Port*	Port*	Potential future SIP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">See <i>Improvements in Parks and Open Spaces</i> section below for further details on bollards.Port will be responsible for repair and replacement of bollards due to damage or life cycle degradation and restoring bollards if removed for utility excavations by City Departments.Excavators required to replace removed or damaged bollards in kind.Future IMEP or annexation may include fixed and removable bollards if Public Works accepts street ROW that bollards are installed within.For retractable bollards, Port or its assignee ownership obligations include associated bollard control systems such as SFFD bollard override pedestals and associated electrical conduits installed within the ROW.Phase 1 does not have any bollards in the dedicated ROW. The only bollard components installed within the ROW in Phase 1 include the two SFFD Override pedestals and associated conduits installed on Toni Stone Crossing ROW adjacent to the Bridgeview and Dr. Maya Angelou Paseos.	NA
	Utilities in Public Rights-of-Way									
30.	<i>Non-City/Private Utility Systems</i>	<i>Including but not limited to Gas, District Energy (DE), Bay Condenser Water (BCW), Mission Rock Utility (MRU), MRU MRU non-potable water, Telecommunication, Telephone, vaults, conduits, cabinets and pull-boxes, communication, etc.</i>	Public Works	Utility Owner (MRU)	Utility Owner (MRU)	Utility Owner (MRU)	Franchise Agreement/Utility Conditions Permit or GMEP	Utility Owner	<ul style="list-style-type: none">Will not be accepted by the City. These facilities will be owned by private utility providers.	Base SIP Permit (Phase 1)
31.	<i>Sanitary Sewer System upstream of Manhole SSMH #100B (Asset ID MH324116) on 3rd Street up to private Blackwater Treatment Plant in BLDG B (Lot 2)</i>	<i>Permanent pipes, pipe fittings, manholes and laterals up to face of vertical curb</i> <i>Includes SFFM and upstream collection system to Building B blackwater treatment plant.</i>	Public Works with signoff from SFPUC and Port	Utility Owner (MRU)	Utility Owner (MRU)	Utility Owner (MRU)	JMOU and GMEP	Third Party private utility provider or Maintenance CFD	<ul style="list-style-type: none">Sanitary sewer collection pipes and associated infrastructure within the Toni Stone Crossing, and Dr. Maya Angelou Paseo.Sanitary Sewer Force Main (SSFM) Building B blackwater treatment plant to PUC system in 3rd StreetLaterals and cleanouts/air vents serving development parcels behind the face of curb are to be owned and maintained by said development parcel the lateral serves.	Base SIP Permit (Phase 1) IB2
32.	<i>Traffic Signals</i>	<i>Traffic signal heads, poles, cabinets, service pedestal cabinet, conduits, APS, pedestrian countdown signals, ADA push button posts, related foundation and infrastructure, vehicle detection equipment including pavement sensors and cameras, CCTV cameras, transit pre-emption/priority equipment, SFMTA Fiber and all related appurtenances (excluding streetlights)</i>	Public Works with signoff from SFMTA	SFMTA	SFMTA	SFMTA	JMOU	SFMTA	<ul style="list-style-type: none">Two existing signals were modified in Phase 1:<ul style="list-style-type: none">Third Street-Channel Street,Third Street-Bay Trail Crossing (former Terry Francois Boulevard)For replacement in kind of existing signal poles with foundations imbedded within LCC, it has been recommended by the Phase 1 Geotechnical Engineer of Record and concurred by SFPW that up to 12 inches of either aggregate base or additional concrete may be backfilled around the replaced foundation, provided the overall volume of concrete is not more than an additional 12 inches on all sides of the design pole diameter.. This	Base SIP Permit (Phase 1) IB 2 IB 13

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									<div>shall not apply to new signal poles being installed within LCC.</div> <div><div></div><div><div></div><div>A new signal was installed at Third Street and Toni Stone Crossing. The horizontal developer designed this signal and installed it as part of the approved Phase 1SIP .</div><div>Two new signals, identified in the EIR, to be located at 4th Street and Long Bridge and at 4th Street and Mission Rock will be designed and installed by the SFMTA via a fee payment by the Developer. These will be installed after Phase 1A.</div><div>Department of Technology (DT) services and maintains SFMTA fiber.</div><div>SFPUC will own/maintain/operate streetlight luminaire fixture regardless of pole owner</div><div>For SFPUC owned streetlight poles with traffic signals (no mast arm or OCS wires), SFMTA will maintain the signal infrastructure</div></div></div>	
33.	Department of Technology (DT) Facility	Vaults, conduits and pull-boxes for DT fiber-optic network and Public Safety network	Public Works with signoff from DT	DT	DT	DT	JMOU	DTPS	<div><div></div><div>MOU with Port</div></div>	<div>Base SIP Permit (Phase 1)</div> <div>IB2</div>
34.	SFPUC Power System	<div>Vaults (primary and secondary), conduits, pull-boxes, ground rods, and appurtenances in accordance with SFPUC Rules and Regulations Governing Electrical Service</div> <div>Includes elevated 12KV line sited on TFB feeding permanent underground SFPUC-owned infrastructure on Toni Stone</div>	Public Works with signoff from PUC	SFPUC	SFPUC	SFPUC	<div>JMOU</div> <div>BOS Ordinance Number 211028 (Acceptance and Public Dedication of 12-Kilovolt Power Facilities – Mission Rock)</div> <div>Port/PUC Maintenance MOU TBD</div>	SFPUC	<div><div></div><div>SFPUC Power system facilities outside the public ROW would be subject to same maintenance and ownership standards but must be within an easement and subject to an easement agreement or equivalent.</div><div>Note, the primary service feed to CBP, runs from Toni Stone, up the Bridgeview Paseo, and terminates at the Transformer/Switchgear in the Restroom adjacent Utility Yard in the center of CBP.</div><div>For the electric service to China Basin Park, the SFPUC owns the switch-interrupter located in the PROW along Toni Stone Crossing and just east of Bridgeview Street. The Port owns the substructures, conductors, and electrical equipment from the SFPUC switch-interrupter on Bridgeview Street and inside the park. Building G owns the substructures and conductor downstream from the SFPUC interrupter in the PROW, specifically, the conductor from the SFPUC interrupter that goes up-into and under the building and all the way to the primary switchgear inside the building.12kV electrical infrastructure routed through Bridgeview Paseo that serves China Basin Park to be owned the Port and Maintained by the SFPUC at Port cost per MOU or other Agreement. See China Basin Park as-built drawings, sheet E2.0.</div></div>	<div>Base SIP Permit (Phase 1)</div> <div>Port-Issued CBP Permit</div>

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									<ul style="list-style-type: none">Above-ground 12kV line runs up TFB and ties into Toni Stone 12kV distribution system will be replaced by permanent underground SFPUC-owned infrastructure in a later project phase.<ul style="list-style-type: none">Link to BOS Ordinance Accepting the 12-KV Line: https://sfgov.legistar.com/LegislationDetail.aspx?ID=5154048&GUID=518E254A-49AD-419F-8C3D-C357E0B975C9&Options=ID Text &Search=Mission+Rock	
35.	Sanitary Sewer System downstream of Private Manhole SSMH #100B (Asset ID MH324116) on 3 rd Street	Permanent pipes, pipe fittings, and manhole	Public Works with signoff from SFPUC	SFPUC	SFPUC	SFPUC	JMOU	SFPUC		Base SIP Permit (Phase 1) IB2
36.	Storm Drain (SD) System in Rights-of-Way Toni Stone Crossing and Dr. Maya Angelou Lane	Permanent pipes, pipe fittings, manholes, drain inlets and laterals up to face of vertical curb, including the stormwater diversion structure	Public Works approval with signoff from SFPUC	SFPUC	SFPUC	SFPUC	JMOU and IMEP	SFPUC	<ul style="list-style-type: none">Laterals upstream of the curb owned and maintained by building owner per SFPW Code Article 4, Sec 103.Temporary SD pipes, including those draining undeveloped construction areas outside of public rights of way, will not be offered to SFPUC for acceptance and will remain under Port ownership.Public storm drain diversion manhole structure to split required public and private WQ treatment flows from public storm drain system.Stormwater treatment facilities and stormwater pipes in parks and open spaces addressed elsewhere in this Matrix.Port assets in ROW subject to IMEP (see below 3 bullets)Port to own, maintain, and accept liability for 16” SD pipe connecting Port-owned SD infrastructure in the Dr Maya Angelou Way Paseo with SFPUC-owned infrastructure in Toni Stone (<i>Port Asset ID # 3370-SD-SL-0030</i>)Port to own, maintain, and accept liability for 12” SD pipe connecting Port-owned SD infrastructure in the Dr Maya Angelou Way Paseo with SFPUC-owned infrastructure in Toni Stone (<i>Port Asset ID # 3370-SD-GM-0003</i>)Port to own, maintain, and accept liability for 18” SD pipe connecting Port-owned SD infrastructure in the Bridgeview Paseo with SFPUC-owned infrastructure in Toni Stone (<i>Port Asset ID # 3370-SD-SL-0044</i>)	Base SIP Permit (Phase 1)
37.	Stormwater diversion structure (Toni Stone & Dr. May Angelou Way Intersection)	Public storm drain structure to split required public and private WQ treatment flows from public storm drain system	Public Works	SFPUC	SFPUC	SFPUC	JMOU	SFPUC	<ul style="list-style-type: none">The diversion structures divert treatment flows to Port outfalls and the larger storm events to either the SFPUC system in 3rd Street or the existing Port outfalls.SFPUC owns diversion structure, Port owns the pipes exiting the diversion structure	Base SIP Permit (Phase 1)
38.	Port Storm Drain (SD) Assets in Public Rights-of-Way and Port Land Draining to Port’s Existing Atwater Outfall	Permanent and temporary pipes, pipe fittings, manholes, drain inlets and laterals up to face of vertical curb, along with stormwater diversion structure and Contech CDS trash capture unit	Public Works approval with signoff from SFPUC	Port	Port	Port	JMOU and IMEP	Port	<ul style="list-style-type: none">Port to own and maintain storm drain pipes draining to Port’s existing Atwater Outfall with transfer of SD pipes to SFPUC anticipated upon project’s future construction of new outfall to SFPUC standards at Channel Wharf.	Phase 2 BOD

*Port may pass maintenance responsibility to appropriate party via Maintenance Agreement

LEGEND

- Yellow: Private/Port Ownership-Private Port Maintenance
- Blue: City-Ownership-Private/Port Maintenance
- Green: City Ownership and Maintenance
- Orange: LCC Incremental Cost
- Pink: Private Entity Ownership and Maintenance

Mayor ED 17-02 Priority Permit

Row	Specific Improvement	General Description	Permitting Authority	Improvement Ownership Party	Party Having Liability	Party Responsible for Maintenance	Instrument Memorializing Maintenance Rights & Duties	Responsible Party for Providing Funding Source for Maintenance	Additional Notes	Permit
									<ul style="list-style-type: none">Port owns SD drain pipes within the Toni Stone ROW that connect Port SD lines sited in the Bridgeview Paso and Dr. Maya Angelou Paseo with PUC-owned SD Main in Toni Stone Crossing.Public storm drain diversion manhole structure to split required private and public water quality treatment flows from storm drain system.Specific to Phase 2 infrastructure. Will be installed in Phase 2 Locations where SFPUC SD facilities are proposed on Port parcels, an MOU or other agreement will be required subject to approval by SFPUC.	
39.	Auxiliary Water Supply System (AWSS)	Permanent pipes, pipe fittings, valves, vaults, above ground structures and infrastructure, pumps, manifolds and hydrants	Public Works approval with signoff from SFPUC	SFPUC	SFPUC	SFPUC	JMOU	SFPUC		Base SIP Permit (Phase 1) Cathodic Protection Added in PHASE 1 SIP PERMIT IB5
40.	Non-potable Water (NPW) Distribution System	Permanent pipes, pipe fittings, valves, laterals up to and including the meters in accordance with SFPUC regulations	Public Works	Utility Owner (MRU)	Utility Owner (MRU)	Utility Owner (MRU)	GMEP (infrastructure in ROW)	Private Entity	<ul style="list-style-type: none">System will be private and operated by a 3rd Party.Requires approval by DBI and DPH per code.	Base SIP Permit (Phase 1) PHASE 1 SIP PERMIT IB1 PHASE 1 SIP PERMIT IB4 PHASE 1 SIP PERMIT IB5
41.	Low Pressure Water (LPW) System	Permanent pipes, pipe fittings, valves, hydrants, laterals up to and including the meters in accordance with SFPUC regulations	Public Works approval with signoff from SFPUC	SFPUC	SFPUC	SFPUC	JMOU	SFPUC	<ul style="list-style-type: none">LPW facilities in Port Open Space will be owned and maintained by the Port.SFPUC currently owns and maintains LPW infrastructure within TFB, which is a Port ROW.No low-pressure water service connections for buildings will be permitted on Shared Public Ways (Dr. Maya Angelou Way and Terry A. Francois Blvd.)	Base SIP Permit (Phase 1) PHASE 1 SIP PERMIT IB1 PHASE 1 SIP PERMIT B4 PHASE 1 SIP PERMIT IB5
42.	Green Stormwater Infrastructure in Public ROW	SFPUC standard stormwater controls including vegetation, mulch, bioretention soil media, aggregate layer, underdrains, internal piping and fittings, cleanouts, curbs/walls, laterals from facility to connection to SD, etc.	Public Works approval with signoff from SFPUC	SFPUC	SFPUC	SFPUC Port responsible for plants and mulch	SFPUC	SFPUC	<ul style="list-style-type: none">Applies to stormwater management facilities that treat runoff generated from public streets only and future SFPUC outfall.Excludes maintenance of vegetation and mulch, assigned to Port.Phase 1 has stormwater management facilities on Dr. Maya Angelou Way.	Base SIP Permit (Phase 1)

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LEGEND

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Mayor ED 17-02 Priority Permit

Row	Specific Improvement	General Description	Permitting Authority	Improvement Ownership Party	Party Having Liability	Party Responsible for Maintenance	Instrument Memorializing Maintenance Rights & Duties	Responsible Party for Providing Funding Source for Maintenance	Additional Notes	Permit
43.	Non-Standard Linear Drainage Elements	Valley gutters and trench drains (and grates) located on Dr. Maya Angelou Way and Terry Francois Boulevard, Includes trench drain appurtenances such as drain inlets and discharge fitting to Green Stormwater Infrastructure	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&R's) or Maintenance CFD		IB7 (Phase 1 SIP Permit)
44.	Electrical Receptacles (within Dr. Maya Angelou ROW)	Either pedestal-mounted or flush-mounted electrical outlets sited along DMA to support activation (holiday lights, buskers, small performances, etc.)	Public Works with sign-off from the Port	Port	Port*	Port*	IMEP for conduit, outlets, junction boxes, etc. in ROW SFPUC Access Rights Agreement for electrical meter in Mission Rock Square	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD		PHASE 1 SIP PERMIT IB9
	Utilities in Parks and Open Spaces									
45.	12kV Electrical Conduit Serving China Basin Park	Conduit runs from SFPUC vault in Toni Stone Crossing, through the Bridgeview Paseo and to the SFPUC electrical meter in the CBP utility yard.	Port	Port	Port	Port	China Basin Park as-built construction drawings JMOU NEED MAINTENANCE AGREEMENT between Port PUC	Port	<ul style="list-style-type: none">Per sheet E2.0 in the CBP as-built drawings, 12kV electrical facilities are "to be owned by the Port of SF and maintained by the SFPUC at Port's expense under special agreement..."Port owns all electric facilities on their property, except SFPUC owns the interrupter and the meters.	China Basin Park: Port-Issued CBP Permit
46.	Storm Drain (SD) System in Paseos and Port Open Space	Port-owned storm drain pipes in Paseos, China Basin Park, Mission Rock Square, Channel Lane Open Space etc.	Public Works	Port	Port	Port*	JMOU and IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Port owns SD drain pipes within the Toni Stone ROW that connect Port SD lines sited in the Bridgeview Paso and Dr. Maya Angelou Paseo with PUC-owned SD Main in Toni Stone Crossing.PUC owns SD main pipe under Bridgeview Cul-de-sac from Lot D boundary to the terminus point.	Paseos: Base SIP Permit (Phase 1) China Basin Park: Port-Issued CBP Permit
47.	Sanitary Sewer (SS) in Paseos and Port Open Space	Port-owned sanitary sewer pipes in Paseos China Basin Park, Mission Rock Square, Channel Lane Open Space, etc.	Public Works	Port	Port	Port*	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD		Paseos: Base SIP Permit (Phase 1) China Basin Park: Port-Issued CBP Permit
48.	Existing Storm Drain Outfall	Existing Port outfall to remain at China Basin Park. Stormwater treatment flows drain to green infrastructure in China Basin Park, then to outfall along with other stormwater from area drains within park.	Port	Port	Port	Port	JMOU	Port	<ul style="list-style-type: none">SFPUC pipes convey flows to existing Port outfalls. Port and Developer to lead regulatory compliance and permitting, as required.Existing Port SD system tributary to existing Channel Wharf outfall to remain in early phases.Channel Wharf Outfall to be replaced in future phase with SFPUC outfall/asset.	Port-Issued CBP Permit
49.	Low Pressure Water (LPW) System and Fire Hydrants in Paseos and Port Open Space	Private water line, meter, and backflow preventer at edge of ROW, and hydrants, potable main, line to F&B pavilion.	Port	Port	Port	Port*	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">PUC owns LPW main under Bridgeview Cul-de-sac from Lot D boundary to the terminus point.	Paseos: Base SIP Permit (Phase 1) China Basin Park: Port-Issued CBP Permit

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LEGEND

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Mayor ED 17-02 Priority Permit

Row	Specific Improvement	General Description	Permitting Authority	Improvement Ownership Party	Party Having Liability	Party Responsible for Maintenance	Instrument Memorializing Maintenance Rights & Duties	Responsible Party for Providing Funding Source for Maintenance	Additional Notes	Permit
50.	Power Infrastructure in Paseos and Port Open Space	Phase 1 electrical infrastructure is located in the Bridgeview Paseo and powers China Basin Park	Port with signoff from SFPUC	Port	Port	Port*	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Parks and Open Spaces in future phases may require additional Port-owned power infrastructurePUC owns Power conduits under Bridgeview Cul-de-sac from Lot D boundary to the terminus point.PUC owns electrical meter in future Mission Rock Square	Paseos: <ul style="list-style-type: none">Phase 1 Base SIP PermitIB3 to Phase 1 SIP Permit China Basin Park: Port-Issued CBP Permit
51.	Combined Traffic Signal/Streetlight Pole at NE Corner on 3rd and Channel (within Channel Street ROW)	Combined Traffic Signal/Streetlight Pole on the NE Corner on 3rd and Channel.	Public Works approval for initial design with signoff from SFMTA and SFPUC	SFMTA SFPUC (streetlight and arm)	SFMTA SFPUC (streetlight and arm)	SFMTA (pole and signal) SFPUC (streetlight and arm)	JMOU Access rights granted by Port to SFMTA/SFPUC via JMOU	SFMTA (pole signal, and mast arm) SFPUC (streetlight and luminaire arm)	<ul style="list-style-type: none">Pole needs to be sited within Port open space in Phase 1. Pole will likely be relocated to the Public ROW in Phase 2	Base SIP Permit (Phase 1) PHASE 1 SIP PERMIT IB2
52.	Electrical receptacles within Dr. Maya Angelou and Bridgeview Paseos	Either pedestal-mounted or flush-mounted electrical outlets sited along DMA (both Paseo and street) to support activation (holiday lights, buskers, small performances, etc.)	Public Works with sign-off from the Port	Port	Port*	Port*	Parks Lease (depending on location)	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD		PHASE 1 SIP PERMIT IB9
53.	Non-City/Private Utility Systems	Including but not limited to Gas, Non-Potable Water (NPW), District Energy (DE), Bay Condenser Water (BCW), Telecommunication, Mission Rock Utility (MRU) Telecommunication, Telephone, vaults, conduits, cabinets and pull-boxes, communication, etc.	Public Works (for Port opens pace areas permitted under the Phase 1 SIP permit) Port	Utility Owner	Utility Owner	Utility Owner	Port-issued licenses for 3 rd Party Utilities (PG&E, MRU, etc.)	Utility Owner	<ul style="list-style-type: none">Will not be accepted by the City. These facilities will be owned by private utility providers; subject to separate Port license agreements.	Base SIP Permit (Phase 1) PHASE 1 SIP PERMIT IB1 PHASE 1 SIP PERMIT IB4 Port-Issued CBP Permit
54.	Stormwater Trash Collection Structure - China Basin Park		Port	Port	Port	Port	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">MRP to maintain outfall trash collection structure.Required for compliance with SWRCB Trash Capture Rule.	Port-Issued CBP Permit
55.	Existing Atwater Storm Drain Outfall	Existing Port Outfall to remain at Pier 48.5 wharf until replaced by Future Channel Wharf Stormwater Outfall	Port	Port	Port	Port	JMOU	Port	<ul style="list-style-type: none">Atwater/Channel Wharf Outfall to be replaced by project in future phase	NA
56.	Future Channel Wharf Storm Drain Outfall, including Stormwater Trash Capture Device	New SD outfall with backflow preventer will be constructed at Channel Wharf	Port with SFPUC approval	SFPUC	SFPUC	SFPUC	JMOU	SFPUC	<ul style="list-style-type: none">SFPUC will take ownership once new outfall is constructed to SFPUC Standards and full build-out of project is complete.SFPUC to own, operate and maintain trash capture device upstream of the future Channel Wharf Outfall upon SFPUC Acceptance of the SD system.Required for compliance with the SRWCB Trash Capture Rule.Will be constructed in a future phase.	NA

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Mayor ED 17-02 Priority Permit

Row	Specific Improvement	General Description	Permitting Authority	Improvement Ownership Party	Party Having Liability	Party Responsible for Maintenance	Instrument Memorializing Maintenance Rights & Duties	Responsible Party for Providing Funding Source for Maintenance	Additional Notes	Permit
	Improvements in Parks and Open Spaces									
57.	Lightweight Cellular Concrete (LCC) Fill (in Port Parks and Open Spaces)	Lightweight cellular concrete used to raise grades and mitigate consolidation settlement	Port	Port	Port	Port*	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD		Paseos: Base SIP Permit (Phase 1) China Basin Park: Port-Issued CBP Permit
58.	Parks and Open Space Improvements	Mission Rock Square, China Basin Park, Channel Street, Channel Lane, Channel Wharf, Dr. Maya Angelou Way Paseo, Bridgeview Paseo, Terry Francois Blvd Paseo	Port	Port	Port	Port*	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Includes entire subgrade section, including but not limited to Geofoam or other lightweight fill materials, soil, planting, utilities supporting park facilities (including lateral services for kiosks), pavement, kiosks, structures, walls, light poles, light fixtures, lighting sub-structures and point-of-connection to power source, ancillary furnishing materials, Bay Trail in China Basin Park. Excludes centralized stormwater treatment serving both public and private properties (see item below).	Port-Issued CBP Permit
59.	Centralized Green Stormwater Infrastructure (GSI) in China Basin Park	Centralized stormwater controls, including the overall treatment system, such as vegetation, mulch, soil media, aggregate layer, underdrains, internal piping and fittings, discharge and overflow structures, conveyance piping and appurtenances, curbs/walls, and laterals, treatment pump station, vaults, pumps and appurtenances, force mains, diversion structures, and sediment removal devices	Port approval with signoff from SFPUC	Port	Port	Port*	JMOU China Basin Parks Lease	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Applies to stormwater management facilities that treat runoff generated from public ROW and streets, Port open space and development parcels on leased Port property and convey flows to the Port outfalls.	Port-Issued CBP Permit
60.	Centralized Green Stormwater Infrastructure in Mission Rock Square	Future (Phase 2) Stormwater BMP in Mission Rock Square will treat a mix of stormwater runoff from the ROW, and stormwater runoff from private parcels. May include stormwater controls, such as, vegetation, soil media, aggregate matrix, underdrains, internal piping and fittings, cleanouts, conveyance piping appurtenances, curbs/walls, and laterals from facility, treatment pump station, pumps, force mains, and sediment removal devices	Port	Port	Port	Port*	TBD – (to be revised in Phase 2)	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Will treat a mix of ROW and private parcel water	Phase 2 Basis of Design
61.	Street Rooms and Public Art Installations in Paseos	Permanent sculptural art, and/or urban design installations intended to activate public open spaces and foster human interaction. Artwork typically includes seating among other features.	Public Works with sign-off from the Port	Port*	Port*	Port*	JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Phase 1 Includes one street room / sculpture within Port open space (“Garden Party” by Min Designs)	PHASE 1 SIP PERMIT PHASE 1 SIP PERMIT IB10

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LEGEND

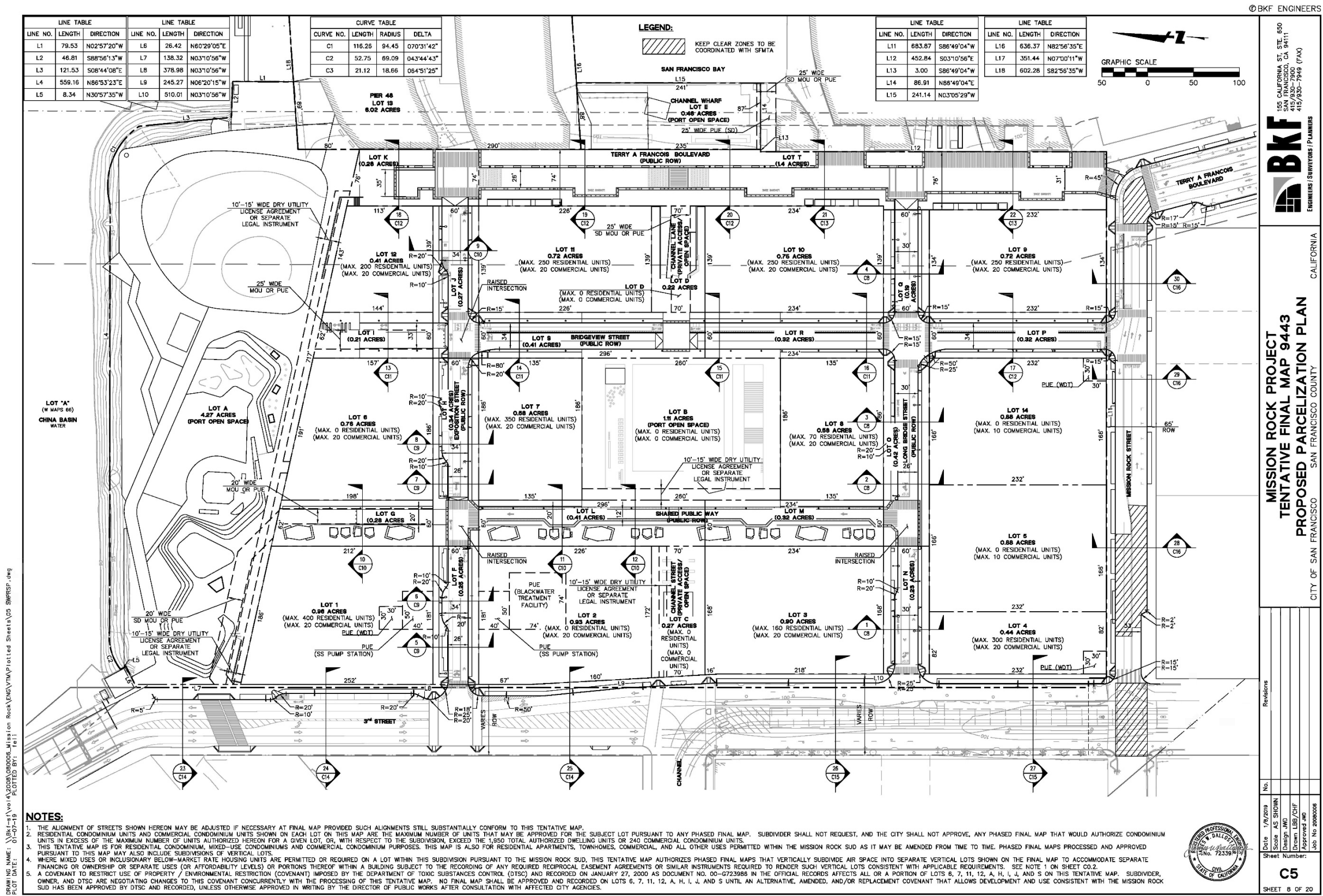
- Yellow: Private/Port Ownership-Private Port Maintenance
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Mayor ED 17-02 Priority Permit

Row	Specific Improvement	General Description	Permitting Authority	Improvement Ownership Party	Party Having Liability	Party Responsible for Maintenance	Instrument Memorializing Maintenance Rights & Duties	Responsible Party for Providing Funding Source for Maintenance	Additional Notes	Permit
62.	<i>Bollards and associated control systems sited within the Paseos and Port Open Space</i>	<i>Retractable, Fixed, Removeable Bollards protecting Port Open Spaces that are rated to withstand vehicular impact.</i> <i>Phase 1 Bollards in Port Open Space include:</i> <ul style="list-style-type: none"><i>Fixed bollards (lining 3rd Street and at northern and southern ends of Paseos)</i><i>Retractable “raptor” bollards (at the southern end of Paseos)</i><i>Removeable bollards (at the 3rd Street bike path)</i><i>Retractable, removable, and fixed bollards at entry to CBP at the Northern terminus of TFB (in Port open space)</i>	Public Works	Port*	Port*	Port*	IMEP (Retractable Bollards Fire Override in Toni Stone Crossing) 2023 Port/MRP Parks Lease and associated licenses for items in Port Open Space JMOU	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Port will be responsible for repair and replacement of bollards due to damage or life cycle degradation and restoring bollards if removed for utility excavations by the SFPUC.If bollard stops/prohibits vehicular access SFMTA may need to approve temporary street closure.Excavators required to replace removed or damaged bollards in kind.Port or its assignee ownership obligations include associated bollard control systems such as SFFD bollard override pedestal and electrical conduit installed within the Toni Stone ROW.Bollards at the northern terminus of TFB, are sited within Port open space.	Port-Issued CBP Permit (Bollards on west edge of CBP) Port-issued TFB Bollard Permit (Bollards in CBP at Northern Terminus of TFB) PHASE 1 SIP PERMIT PHASE 1 SIP PERMIT IB12
	Miscellaneous Public Improvements									
63.	<i>Blackwater Treatment Plant</i>	<i>Blackwater plant; sanitary sewer pump station; lift station; blowdown facility</i>	Port Building Department w/ SFPW and SFDPH	Private Entity	Private Entity	Private Entity	Private Utility Agreement	Private Entity		Building Permit (DBI)
64.	<i>Flexible Utility Connections for Public Utilities</i>	<i>Flexible utility connections including pipes and appurtenances to accommodate potential differential settlement where new public utilities connect with existing public utilities at the Phase boundary.</i>	SFPUC	SFPUC	SFPUC	SFPUC	JMOU	SFPUC	<ul style="list-style-type: none">Additional connections anticipated in future phases	PHASE 1 SIP PERMIT IB1 PHASE 1 SIP PERMIT IB4
65.	<i>Temporary 12KV Line</i>	<i>Interim 12KV line sited on the south-side of Toni Stone Crossing feeding Block F.</i>	Port	Port	Port	Port	IMEP	MASTER ASSOCIATION Fees (CC&Rs) or Maintenance CFD	<ul style="list-style-type: none">Interim 12KV line serving construction power for Parcel F will be abandoned after Phase 1 joint trenches are accepted and permanent power is established.	Port-issued 12-Kv Permit
66.	<i>Interim 12kv Above Ground Power Line Sited on the west side of TFB</i>	<i>Poles, Wires, and Appurtenances</i>	Public Works	SFPUC	SFPUC	SFPUC	BOS Acceptance Ordinance (Ordinance Number 219-21)	SFPUC	<ul style="list-style-type: none">Will be undergrounded in Phase 3 when TFB is rebuilt.	

*Port may pass maintenance responsibility to appropriate party via Maintenance Agreement

Figure 1. Tentative Map – Page C5



*Port may pass maintenance responsibility to appropriate party via Maintenance Agreement

Exhibit B

Paseos

Exhibit C

City-Accepted Port Streets

\\b1-171-14-200\00000000 Mission Rock\Exhibits\00000000-04-0750 Ownership Exhibits\00000000-04-0007 Mission Rock\B.C.E.dwg
PLT DATE: 12-2-24
AUTLTD BY: Barre

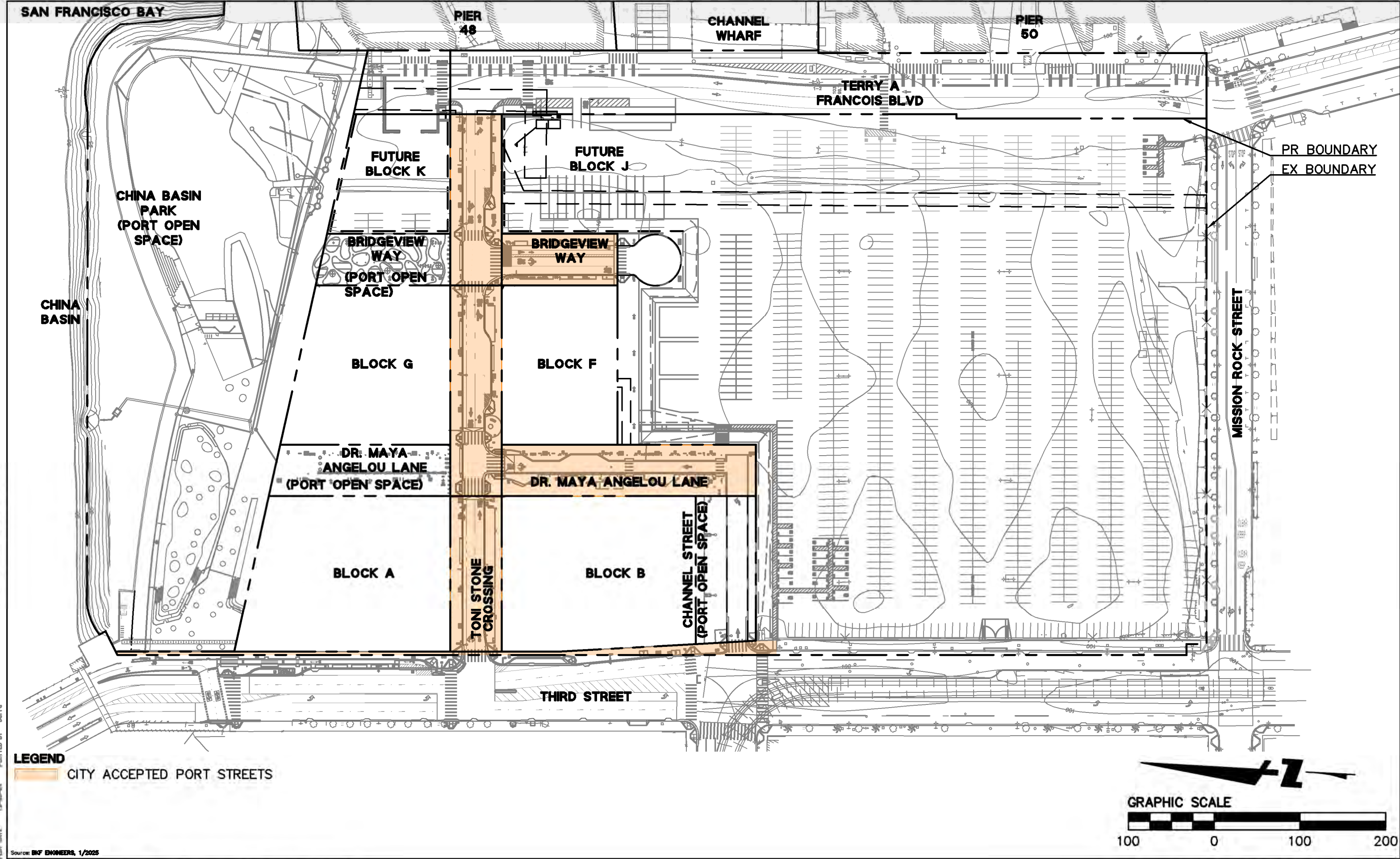
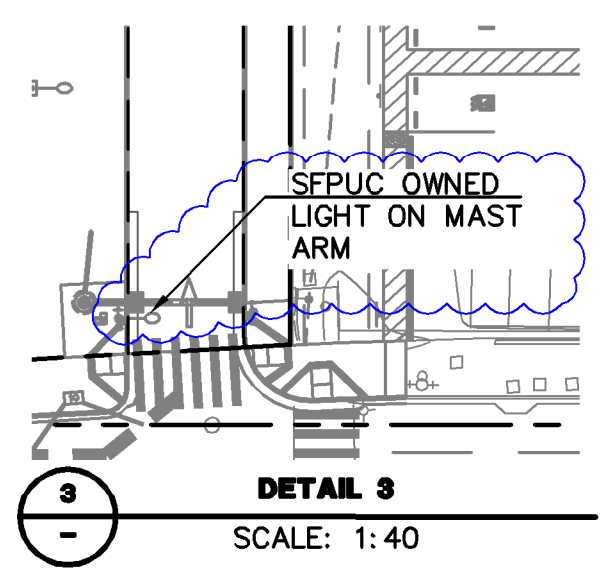
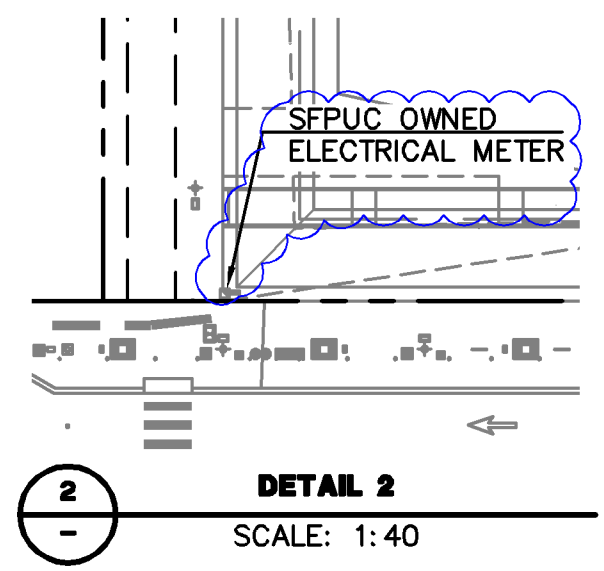
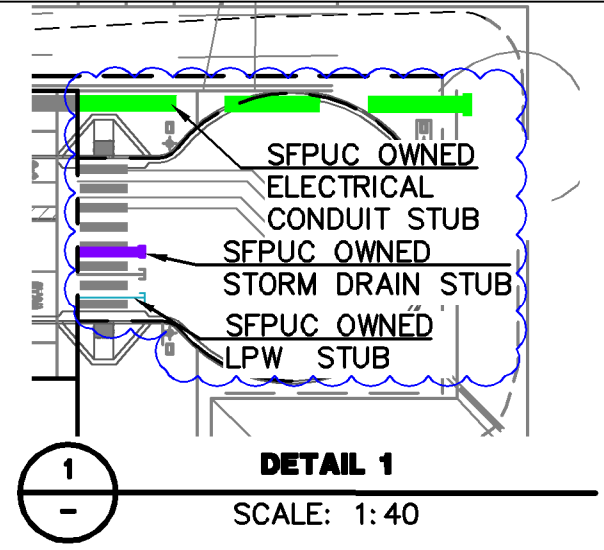
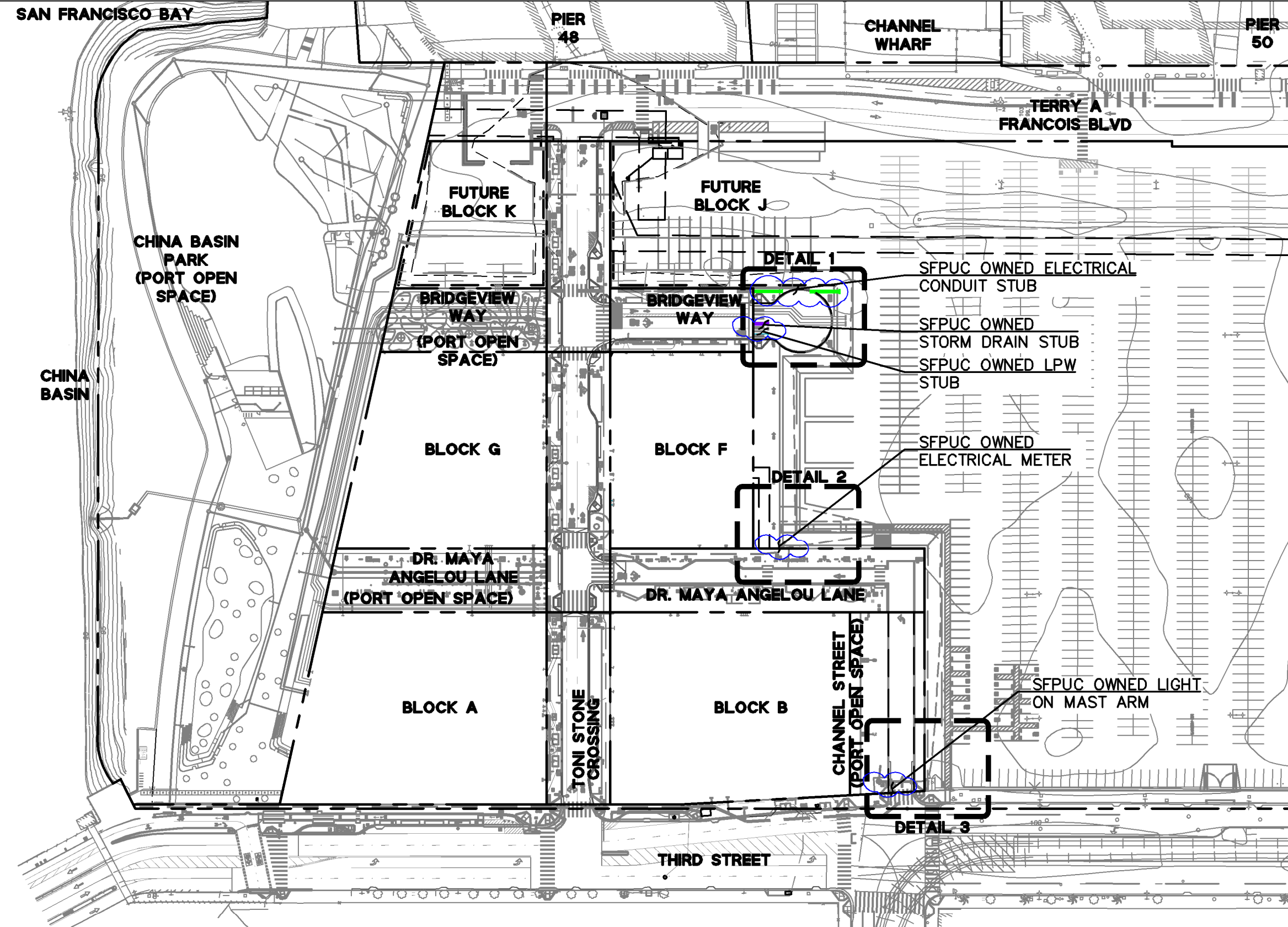


Exhibit D

Depictions and Descriptions of SFPUC-Owned Improvements / Utility License Area

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PLOT DATE: 05-05-25 PLOTTED BY: BERR



LEGEND
SFPUC OWNED IMPROVEMENTS IN PORT PROPERTY

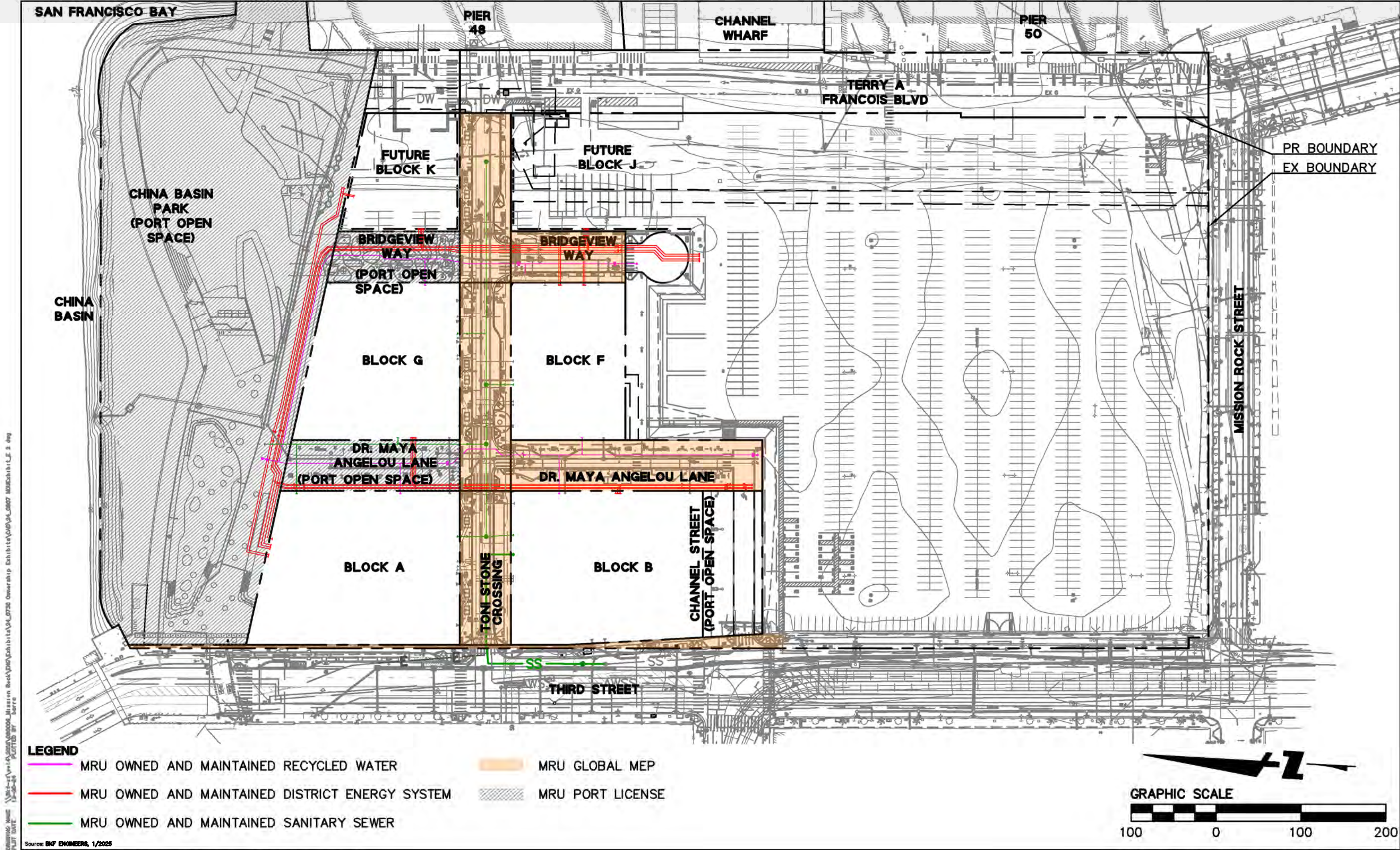
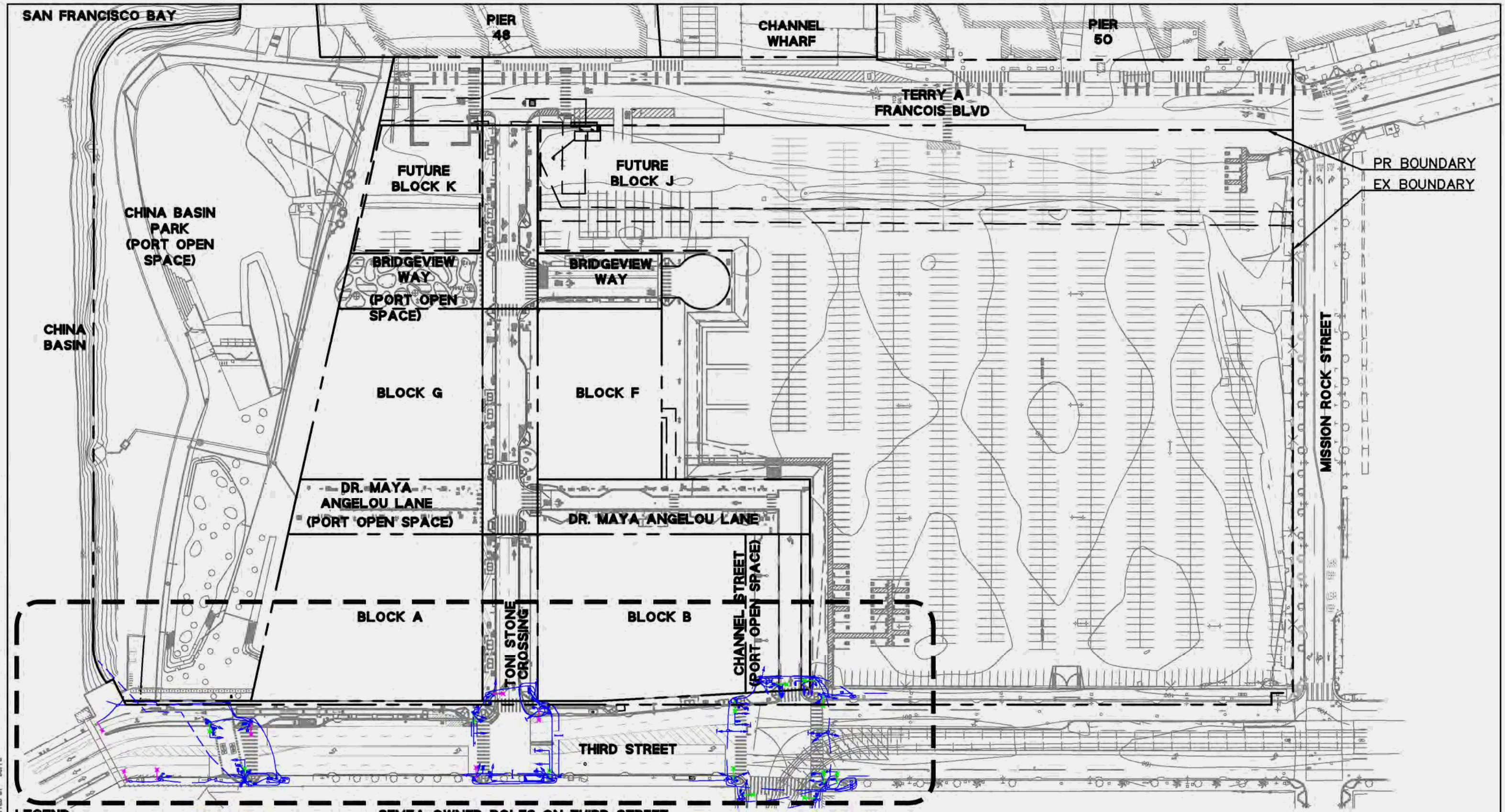


Exhibit E

SFMTA-Owned Improvements



LEGEND

— SFMTA OWNED IMPROVEMENTS

● SFMTA OWNED POLE WITH SFPUC OWNED LIGHT

● SFPUC OWNED POLE

SFMTA OWNED POLES ON THIRD STREET.
SEE EXHIBIT F.2

Source: BKF ENGINEERS, 1/2025

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12-28-24
PLOT DATE
Source: BKF ENGINEERS, 1/2025

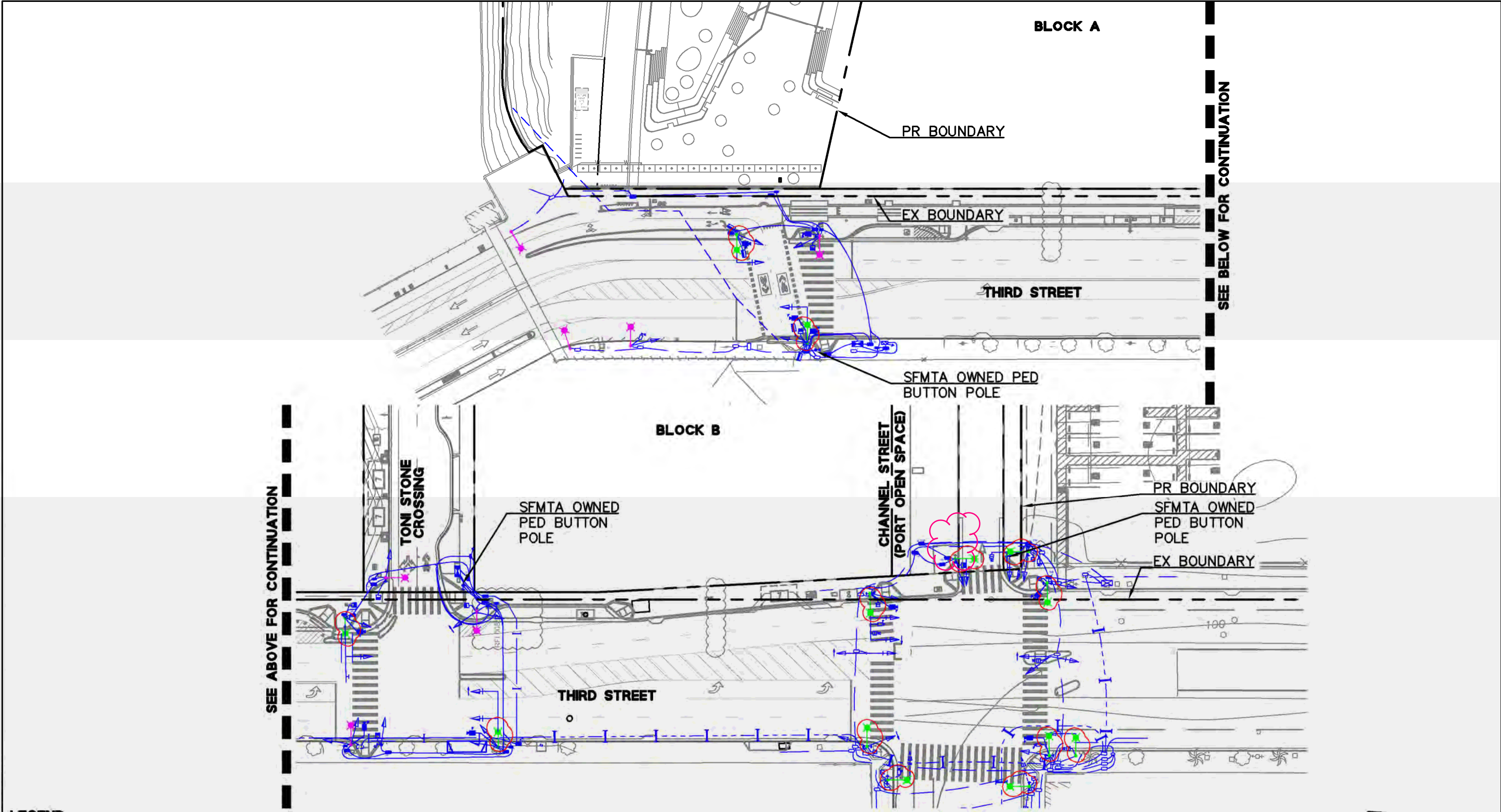
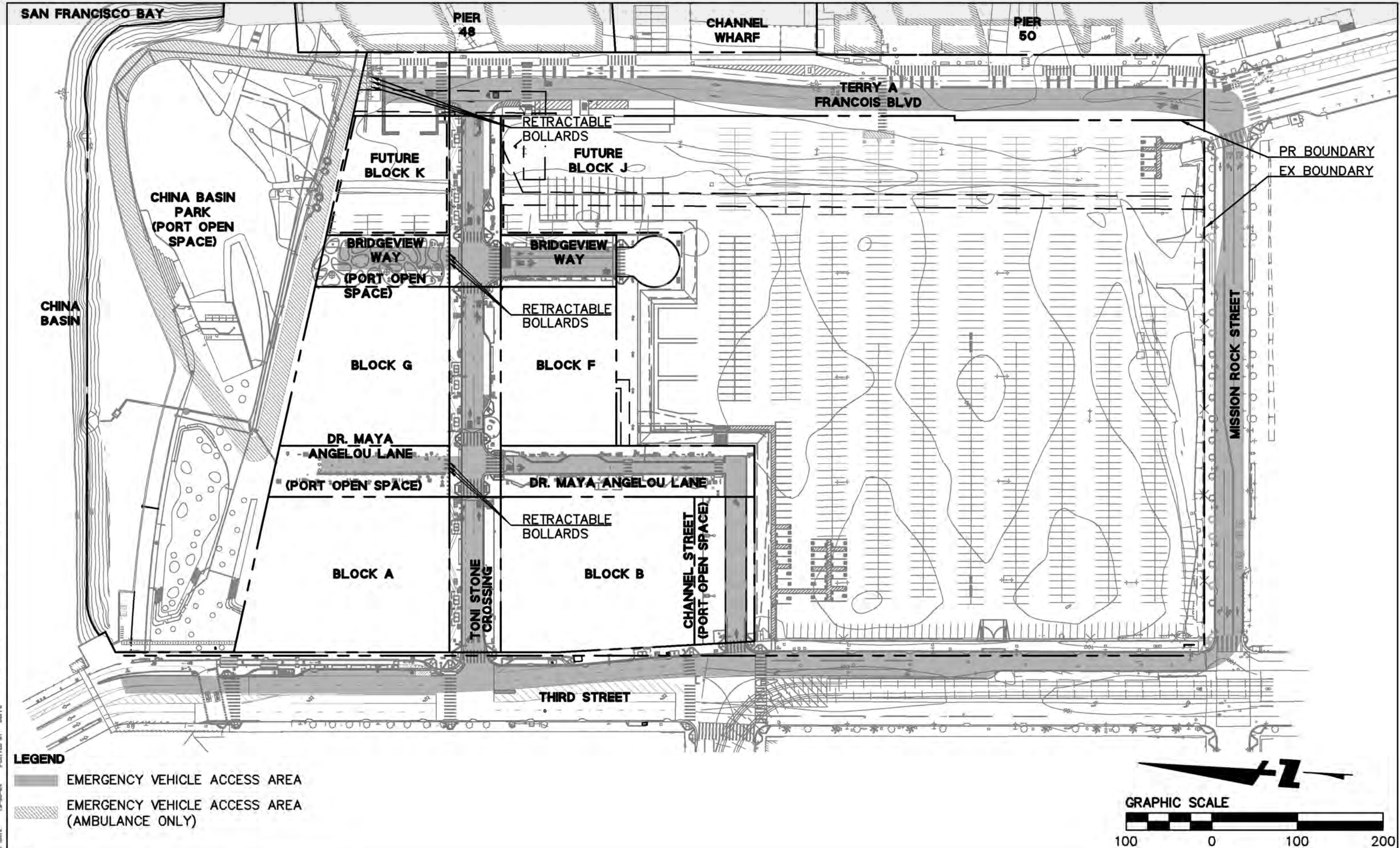


Exhibit F

Emergency Vehicle Access Areas



RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

City and County of San Francisco
Director of Property
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Assessor Parcel Numbers (APNs): 8179B-001; 8719C-002; 8719A-007; 8719C-004; 8719A-006; 8719A-003; 8719A-005; 8719A-001;

Exempt from recording fees under Government Code § 27373

AMENDED AND RESTATED IRREVOCABLE OFFER OF IMPROVEMENTS

This document is exempt from the \$75 Building Homes and Jobs Act Fee (per Government Code §27388.1(a)(2)(D) because the document is a real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state.

AMENDED AND RESTATED IRREVOCABLE OFFER OF IMPROVEMENTS

(Mission Rock Phase 1A)

MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C., a Delaware limited liability company (“Offeror”), does hereby irrevocably offer to the City and County of San Francisco, a municipal corporation (“City”), acting by and through the San Francisco Port Commission (“Offeree”) and its successors and assigns, all of the improvements required pursuant to that certain Public Improvement Agreement (Mission Rock – Phase I), recorded in the Official Records of the City (“Official Records”) on June 12, 2020, as Document No. 2020-K940619, as amended (“PIA”), and as specified in those certain Improvement Plans and Specifications prepared for Offeror, entitled “Seawall Lot 337 / Mission Rock Phase 1 On-Site Street Improvement Plans,” prepared by BKF Engineers, dated February 3, 2020, and Port Permit Nos.; B-2021-0061; B-2022-0085; B-2022-0212; B-2023-0014; B-2023-0016; B-2023-0250; B-2023-0253; and B-2024-0039, approved by City and the Port, as applicable, as those plans may have been amended or revised from time to time with City’s or Port’s approval (collectively, the “Improvement Plans”), and as further described herein.

The property where the public improvements are located consists of:

- (1) The following property, as shown on Final Map No. 9443 (“Final Map No. 9443”), recorded on June 12, 2020, as Document No. 2020-K940602 of Official Records (all “Lot” references hereafter refer to lots as shown on Final Map No. 9443 unless otherwise stated):

Lot A (APN 8719B-001);

Portion of Lot B (APN 8719C-002);

Lot C (APN 8719A-007);

Lot H (APN 8719C-004);

Portion of Lot J (APN 8719A-006);

Portion of Lot K (8719A-003);

Portion of Lot L (8719A-005); and

Portion of Pier 48 (8719-001).

- (2) A portion of AB 9900 Parcel “A,” (Book W of Maps Page 66 of Official Records of the City) (“AB 9900 Parcel A”).

The foregoing affected property is shown on the plat map attached hereto as Exhibit A.

Public improvements offered for dedication herein include the following:

- (1) Within Lots A, C, H and L, a portion of Pier 48, and a portion of AB 9900 Parcel A as shown on Exhibit A, all improvements shown on the Improvement Plans, except for any of the following improvements and related communications systems or conduits as may be located within the referenced Lots: (i) non-potable water facilities shown as “MRU LPW” on Exhibit B attached hereto; (ii) sanitary sewer facilities shown as “MRU SS” on Exhibit C attached hereto; (iii) heating and chilled water facilities; (iv) natural gas facilities; and (v) telecommunications facilities.
- (2) Within Lots B, D, E, F, G, J and K of Final Map No. 9443, and a portion of Third Street adjacent to Lot I:
 - a. Perforated drains for utility vaults in Lightweight cellular concrete (“LCC”) and structural soils in tree wells for draining structural soils in tree wells;
 - b. non-standard intersection paving
 - c. non-standard deepened curbs
 - d. underground utility systems:
 - i. Storm drain pipes connecting Port storm drain assets within the Bridgeview and Dr. Maya Angelou Way Paseos to the SFPUC-owned storm drain main in Toni Stone Crossing.
 - ii. electrical conduit linking Port-owned electrical assets in China Basin Park and the Bridgeview Paseo to a SFPUC-owned vault in Toni Stone Crossing.
 - e. sidewalk street life zone improvements:
 - i. seating and benches;
 - ii. custom trash and recycling receptacles;
 - iii. non-standard bicycle racks;
 - iv. Raptor Bollard operating pedestals
 - v. unit pavers,
 - vi. sidewalk landscaping,
 - vii. Irrigation systems,
 - viii. tree grates
 - ix. public art, including street rooms;
 - f. non-standard roadway signage;

- g. within Dr. Maya Angelou Lane (Lot B):
 - i. streetlight protection elements (stone blocks)
 - ii. flush electrical outlets and associated Port-owned electrical appurtenances
 - iii. fire lane markers
 - iv. non-standard roadway treatments, including non-standard paving, flush curbs;
 - v. linear drainage elements, including valley gutters and trench drains;
 - vi. stormdrain pipes located within the north end of Lot B;
 - vii. sanitary sewer pipes located within the north end of Lot B; and
- h. within a portion of Third Street:
 - i. non-standard curb and pedestrian rail; and
 - ii. custom trash and recycling receptacles.

(3) Phase 1 interim improvements (including within City rights-of-way as applicable), including:

- a. Channel Street (Lot H) geotechnical improvements, grading, landscaping and roadway improvements for temporary access to Dr. Maya Angelou Way (Lot B);
- b. temporary LCC edge protection and associated landscaping and irrigation along the unimproved perimeter of the Phase 1 site (portion of Lot J);
- c. stairs and accessible ramp east of Lot B (portion of Lot J);
- d. non-standard paving at the south end of Dr. Maya Angelou Lane (Lot B);
- e. geotechnical improvements, grading and temporary landscaping along the south side of Lot 4 of Final Map No. 9443; and
- f. geotechnical improvements, grading and temporary streetscape and roadway improvements south of Bridgeview Way (portion of Lot J), including the temporary turnaround.

It is understood and agreed that: (i) Offeree and its successors and assigns shall incur no liability or obligation whatsoever hereunder with respect to such offer of public improvements, and except as may be provided by separate instrument, shall not assume any responsibility for the offered improvements, unless and until such offer has been accepted by appropriate action of

the Offeree's Port Commission, and (ii) Offeree, in its sole discretion, may accept one or more components of this offer of public improvements by formal action of Offeree, and upon such acceptance, shall own and be responsible for maintenance of the accepted public facilities and improvements, except as such responsibility may be imposed on another by operation of law, as may be described in a master street encroachment permit authorized pursuant to City Public Works Code § 786(b), or a similar agreement, pertaining to one or more of the public improvements offered hereby, or as excluded from acceptance for maintenance and liability in the formal action of Offeree.

This Amended and Restated Irrevocable Offer of Improvements amends and restates in its entirety that certain Irrevocable Offer of Improvements recorded on June 12, 2020, as Document No. 2020-K940595 of Official Records.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto.

[Signature on Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Irrevocable Offer of Improvements on _____, 2025.

OFFEROR:

MISSION ROCK HORIZONTAL SUB (PHASE 1),
L.L.C.

A Delaware limited liability company

By: _____

Authorized Signatory

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of California)

) ss

County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description and Plat

LEGAL DESCRIPTION

"OFFER OF IMPROVEMENTS-PORT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF LOTS A, B, C, D, E, F, G, AND H AND A PORTION OF LOTS I, J, K AND L, AS SAID LOTS ARE SHOWN ON FINAL MAP 9443 FILED FOR RECORD ON JUNE 12, 2020 IN BOOK 1 OF FINAL MAPS, AT PAGES 28-38 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO AND A PORTION OF PIER 48, AS SAID PIER 48 IS SHOWN ON SAID FINAL MAP 9443, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

LOT A, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.
CONTAINING 12,303 SQ.FT.

PARCEL 2

LOT C, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.
CONTAINING 9,023 SQ.FT.

PARCEL 3

LOT H, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.
CONTAINING 11,927 SQ.FT.

PARCEL 4

BEGINNING AT THE MOST WESTERLY NORTHWEST CORNER OF LOT J, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE NORTHERLY LINE OF SAID LOT J NORTH 85°37'31" EAST 228.46 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID NORTHERLY LINE NORTH 04°22'29" WEST 161.31 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID NORTHERLY LINE NORTH 85°37'31" EAST 246.02 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID NORTHERLY LINE NORTH 04°22'29" WEST 135.00 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID NORTHERLY LINE NORTH 85°37'31" EAST 139.25 FEET TO THE EASTERLY LINE OF SAID LOT J; THENCE ALONG SAID EASTERLY LINE SOUTH 04°22'29" EAST 104.05 FEET; THENCE SOUTH 57°09'49" WEST 4.16 FEET; THENCE NORTH 30°44'30" WEST 68.13 FEET; THENCE NORTH 11°33'07" WEST 34.03 FEET; THENCE SOUTH 82°37'39" WEST 26.98 FEET; THENCE SOUTH 85°45'28" WEST 60.09 FEET; THENCE SOUTH 05°01'44" EAST 32.98 FEET; THENCE SOUTH 02°18'15" EAST 64.50 FEET; THENCE SOUTH 06°41'45" EAST 105.42 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST WHOSE RADIUS POINT BEARS NORTH 87°16'05" WEST 14.34 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 86°23'23", AN ARC LENGTH OF 21.62 FEET; THENCE SOUTH 86°31'44" WEST 58.70 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH WHOSE RADIUS POINT BEARS NORTH 03°26'31" EAST 28.18 FEET; THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 28°42'32", AN ARC LENGTH OF 14.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST WHOSE RADIUS POINT BEARS NORTH 41°45'18" EAST 10.41 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 45°26'13", AN ARC LENGTH OF 8.26 FEET;

THENCE NORTH 03°29'30" WEST 38.38 FEET; THENCE SOUTH 79°32'07" WEST 30.85 FEET; THENCE SOUTH 85°37'23" WEST 103.61 FEET; THENCE SOUTH 07°38'52" WEST 72.08 FEET; THENCE SOUTH 02°43'04" EAST 17.99 FEET; THENCE SOUTH 85°37'23" WEST 7.99 FEET; THENCE SOUTH 03°48'27" EAST 31.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST WHOSE RADIUS POINT BEARS SOUTH 85°22'15" WEST 12.57 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 88°37'46", AN ARC LENGTH OF 19.44 FEET; THENCE SOUTH 86°32'25" WEST 95.09 FEET; THENCE SOUTH 88°41'26" WEST 69.38 FEET; THENCE NORTH 89°19'25" WEST 37.13 FEET; THENCE NORTH 84°49'13" WEST 17.70 FEET; THENCE SOUTH 89°24'17" WEST 12.51 FEET TO THE WESTERLY LINE OF SAID LOT J; THENCE ALONG SAID WESTERLY LINE NORTH 07°31'48" WEST 3.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 27,260 SQ.FT.

PARCEL 5

BEGINNING AT THE MOST NORTHERLY NORTHWEST CORNER OF LOT K, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE NORTHERLY LINE OF SAID LOT K SOUTH 81°50'43" EAST 75.81 FEET TO THE EASTERLY LINE OF SAID LOT K; THENCE ALONG SAID EASTERLY LINE SOUTH 04°22'29" EAST 3.98 FEET; THENCE SOUTH 85°37'31" WEST 29.50 FEET; THENCE SOUTH 04°22'29" EAST 16.93 FEET; THENCE SOUTH 85°37'31" WEST 44.50 FEET TO THE WESTERLY LINE OF SAID LOT K; THENCE ALONG SAID WESTERLY LINE NORTH 04°22'29" WEST 37.35 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,656 SQ.FT.

PARCEL 6

BEGINNING ON THE WESTERLY LINE OF LOT K, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443, DISTANT THEREON SOUTH 04°22'29" EAST 44.09 FEET FROM THE MOST NORTHERLY LINE OF SAID LOT K; THENCE SOUTH 79°46'13" EAST 2.29 FEET; THENCE SOUTH 36°09'20" EAST 16.29 FEET; THENCE SOUTH 47°09'24" EAST 49.63 FEET; THENCE SOUTH 86°31'15" EAST 17.67 FEET; THENCE SOUTH 24°26'16" EAST 34.98 FEET TO THE EASTERLY LINE OF SAID LOT K; THENCE SOUTH 05°00'32" WEST 42.06 FEET; THENCE SOUTH 06°57'39" WEST 26.16 FEET; THENCE SOUTH 04°22'29" EAST 12.00 FEET; THENCE SOUTH 56°25'54" WEST 20.05 FEET; THENCE SOUTH 28°39'43" WEST 61.81 FEET; THENCE SOUTH 57°09'49" WEST 12.29 FEET TO THE WESTERLY LINE OF SAID LOT K; THENCE ALONG SAID WESTERLY LINE NORTH 04°22'29" WEST 232.72 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,775 SQ.FT.

PARCEL 7

BEGINNING AT THE MOST WESTERLY NORTHWEST CORNER OF LOT L, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE NORTHERLY LINE OF SAID LOT L NORTH 59°17'32" EAST 26.42 FEET; THENCE NORTH 84°20'13" EAST 244.05 FEET; THENCE SOUTH 10°09'05" EAST 5.33 FEET; THENCE SOUTH 89°35'59" EAST 3.64 FEET; THENCE NORTH 00°50'40" WEST 5.59 FEET; THENCE NORTH 85°11'03" EAST 421.70 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST WHOSE RADIUS POINT BEARS SOUTH 16°27'38" WEST 12.00 FEET; THENCE EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 59°14'31", AN ARC LENGTH OF 12.41 FEET; THENCE SOUTH 14°08'25" EAST 139.57 FEET; THENCE NORTH 86°16'26" EAST 10.87 FEET; THENCE SOUTH 08°56'11" WEST 18.81 FEET; THENCE SOUTH 06°59'03" EAST 66.64 FEET TO EASTERLY LINE OF SAID LOT L; THENCE ALONG SAID EASTERLY LINE SOUTH 81°45'02" WEST 34.37 FEET TO AN ANGLE POINT IN SAID EASTERLY LINE; THENCE ALONG SAID EASTERLY LINE SOUTH 04°22'29" EAST 80.38 FEET TO THE SOUTHERLY LINE OF SAID LOT L; THENCE ALONG SAID SOUTHERLY LINE NORTH 81°50'43" WEST 75.81 FEET TO AN ANGLE POINT IN SAID SOUTHERLY LINE; THENCE ALONG SAID SOUTHERLY LINE SOUTH 04°22'29" EAST 3.06 FEET; THENCE SOUTH 89°24'03" WEST 59.17 FEET; THENCE NORTH 82°00'09" WEST 69.37 FEET; THENCE SOUTH 03°37'39" EAST 106.59 FEET; THENCE SOUTH 20°03'38" EAST 11.39 FEET; THENCE NORTH 86°37'08" EAST 38.01 FEET; THENCE NORTH 76°17'20" EAST 8.95 FEET; THENCE NORTH 86°28'31" EAST 38.33 FEET; THENCE NORTH 12°21'00" EAST 4.71 FEET; THENCE NORTH 24°39'37" EAST 33.19 FEET; THENCE NORTH 02°42'09" WEST 33.76 FEET; THENCE NORTH 85°37'23" EAST 21.51 FEET TO THE SOUTHERLY LINE OF SAID LOT L; THENCE ALONG SAID SOUTHERLY LINE SOUTH 04°22'29" EAST 78.43 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID SOUTHERLY LINE SOUTH 85°37'31" WEST 139.25 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID SOUTHERLY LINE NORTH 04°22'29" WEST 143.71 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID SOUTHERLY LINE NORTH 81°50'43" WEST 499.00 FEET TO THE WESTERLY LINE OF SAID LOT L; THENCE ALONG SAID WESTERLY LINE NORTH 04°22'29" WEST 138.32 FEET TO THE POINT OF BEGINNING.

CONTAINING 173,963 SQ.FT.

PARCEL 8

BEGINNING AT THE NORTHWEST CORNER OF PIER 48, SAID POINT OF BEGINNING ALSO BEING AN ANGLE POINT IN THE EASTERLY LINE OF LOT L, AS SAID PIER 48 AND SAID LOT L ARE SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE NORTHERLY LINE OF SAID PIER 48, ALSO BEING THE EASTERLY LINE OF SAID LOT L, NORTH 81°45'02" EAST 34.37 FEET; THENCE SOUTH 07°57'58" EAST 51.93 FEET; THENCE SOUTH 46°00'20" WEST 47.64 FEET; THENCE SOUTH 55°17'56" WEST 0.98 FEET TO A POINT ON THE WESTERLY LINE OF SAID PIER 48, SAID POINT ALSO BEING AT THE SOUTHEAST CORNER OF SAID LOT L; THENCE ALONG THE WESTERLY LINE OF SAID PIER 48, ALSO BEING THE EASTERLY LINE OF SAID LOT L, NORTH 04°22'29" WEST 80.38 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,405 SQ.FT.

PARCEL 9

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL "A", AS SAID PARCEL "A" IS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO" FILED FOR RECORD ON MAY 14, 1976 IN BOOK "W" OF MAPS AT PAGES 66-72, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT I, AS SAID LOT I IS SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE NORTHERLY LINE OF SAID LOT I SOUTH $59^{\circ}17'32''$ WEST 4.46 FEET TO THE NORTHWEST CORNER OF SAID LOT I; THENCE ALONG THE EASTERLY LINE OF 3RD STREET (88.50 FEET WIDE) NORTH $04^{\circ}22'29''$ WEST 9.15 FEET; THENCE SOUTH $33^{\circ}31'11''$ EAST 8.21 FEET TO THE POINT OF BEGINNING.

CONTAINING 18 SQ.FT.

PARCEL 10

LOT B, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.

CONTAINING 17,779 SQ.FT.

PARCEL 11

LOT D, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.

CONTAINING 8,100 SQ.FT.

PARCEL 12

LOT E, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.

CONTAINING 10,866 SQ.FT.

PARCEL 13

LOT F, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.

CONTAINING 14,761 SQ.FT.

PARCEL 14

LOT G, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443.

CONTAINING 11,955 SQ.FT.

PARCEL 15

BEGINNING AT THE NORTHWEST CORNER OF LOT I, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE NORTHERLY LINE OF SAID LOT I NORTH 59°17'32" EAST 4.46 FEET TO THE EASTERLY LINE OF SAID LOT I; THENCE ALONG SAID EASTERLY LINE SOUTH 04°22'29" EAST 517.30 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID EASTERLY LINE SOUTH 07°31'48" EAST 245.27 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID EASTERLY LINE SOUTH 04°22'29" EAST 8.59 FEET; THENCE SOUTH 85°37'31" WEST 17.50 FEET TO THE WESTERLY LINE OF SAID LOT I; THENCE ALONG SAID WESTERLY LINE NORTH 04°22'29" WEST 768.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,848 SQ.FT.

PARCEL 16

BEGINNING AT THE NORTHWEST CORNER OF LOT I, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9443; THENCE ALONG THE WESTERLY LINE OF SAID LOT I SOUTH 04°22'29" EAST 768.81 FEET; THENCE SOUTH 85°37'31" WEST 91.98 FEET; THENCE NORTH 05°44'35" WEST 13.32 FEET; THENCE SOUTH 85°37'31" WEST 8.41 FEET; THENCE NORTH 04°22'02" WEST 80.39 FEET; THENCE NORTH 85°49'33" EAST 8.64 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, WHOSE RADIUS POINT BEARS NORTH 02°21'12" WEST 14.50 FEET; THENCE EASTERLY, NORTHEASTERLY AND NORTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°25'13", AN ARC LENGTH OF 22.88 FEET; THENCE NORTH 04°22'29" WEST 174.01 FEET; THENCE SOUTH 85°37'31" WEST 7.00 FEET; THENCE NORTH 04°22'29" WEST 28.28 FEET; THENCE NORTH 85°37'31" EAST 7.00 FEET; THENCE NORTH 05°23'46" WEST 3.94 FEET; THENCE NORTH 21°38'26" EAST 1.45 FEET; THENCE NORTH 04°32'28" WEST 19.72 FEET; THENCE SOUTH 85°40'57" WEST 0.50 FEET; THENCE NORTH 04°19'03" WEST 34.51 FEET; THENCE SOUTH 85°40'57" WEST 8.88 FEET; THENCE NORTH 04°22'29" WEST 20.95 FEET; THENCE NORTH 85°37'31" EAST 8.90 FEET; THENCE NORTH 04°23'18" WEST 231.70 FEET; THENCE SOUTH 85°37'31" WEST 8.10 FEET; THENCE NORTH 04°22'29" WEST 38.61 FEET; THENCE NORTH 85°37'31" EAST 6.30 FEET; THENCE NORTH 04°22'29" WEST 88.82 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST WHOSE RADIUS POINT BEARS SOUTH 84°20'26" WEST 87.84 FEET; THENCE NORTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14°46'37", AN ARC LENGTH OF 22.65 FEET; THENCE NORTH 57°21'17" EAST 74.78 FEET; THENCE SOUTH 33°31'11" EAST 33.66 FEET TO THE EASTERLY LINE OF 3RD STREET (88.50 FEET WIDE); THENCE ALONG SAID EASTERLY LINE OF 3RD STREET SOUTH 04°22'29" EAST 9.15 FEET TO THE POINT OF BEGINNING.

CONTAINING 64,037 SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

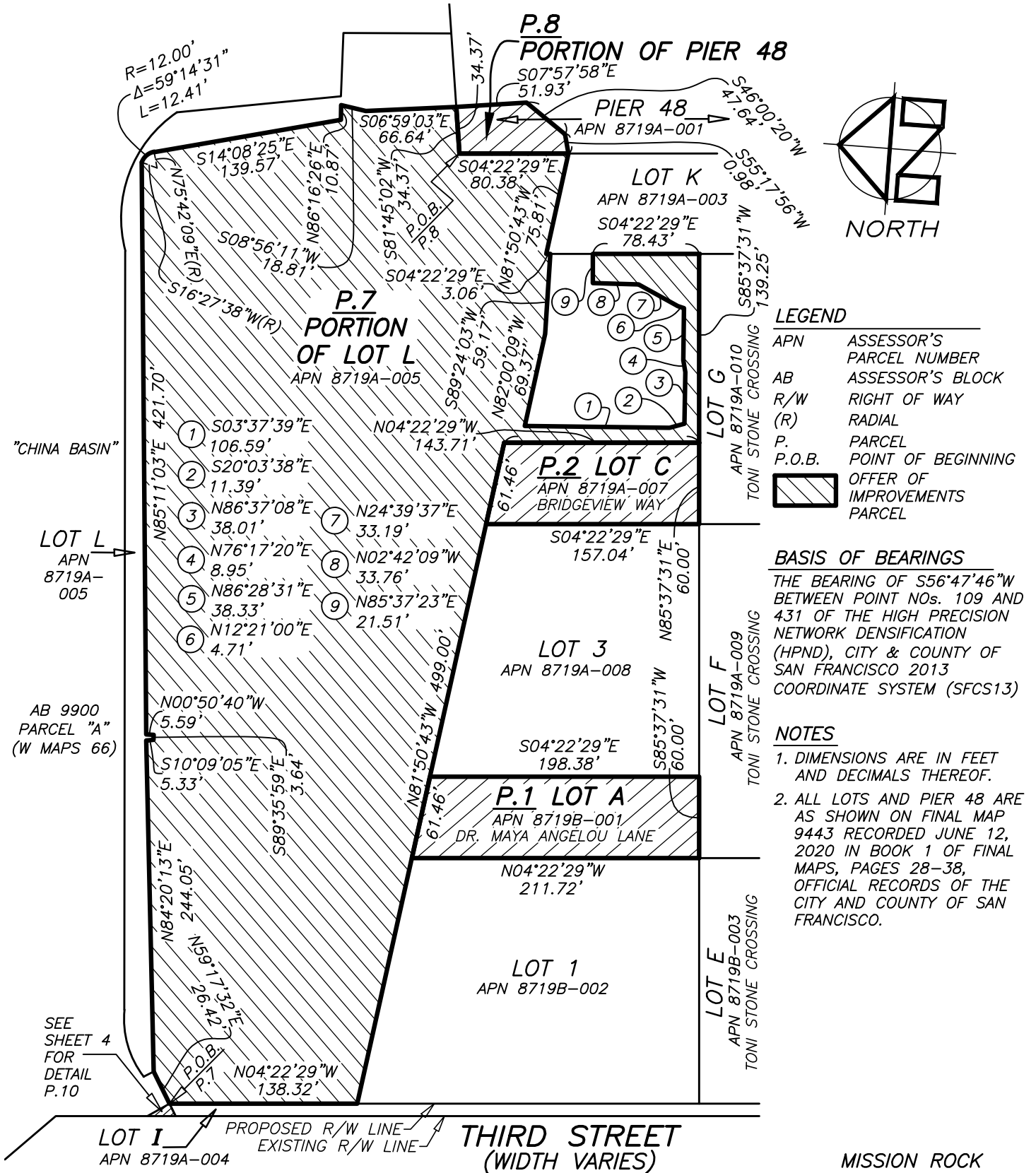
Bj-B.R.

FEBRUARY 6, 2025

BENJAMIN B. RON, PLS 5015



PLAT TO ACCOMPANY LEGAL DESCRIPTION



OFFER OF IMPROVEMENTS – PORT

MISSION ROCK
 SAN FRANCISCO,
 CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE 1"=100' SHEET 1 OF 8 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
 LAND SURVEYORS

859 HARRISON STREET
 SAN FRANCISCO, CA. 94107
 (415) 543-4500
 S-9229E-OFFER OF IMPROVEMENTS.dwg

PLAT TO ACCOMPANY LEGAL DESCRIPTION

**P.5
PORTION
OF
LOT K**

(SEE
SHEET 3
FOR
DETAIL
P.5)

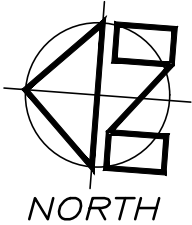
LOT L
APN 8719A-005

PIER 48
APN 8719A-001

LOT K
APN 8719A-003

**P.6
PORTION
OF LOT K**
(SEE SHEET 3
FOR DETAIL P.6)

- | | |
|------------------------------|------------------------------|
| ① S06°41'45"E
105.42' | ⑫ N03°29'30"W
38.38' |
| ② N87°16'05"W(R) | ⑬ S79°32'07"W
30.85' |
| ③ S00°52'42"E(R)
R=14.34' | ⑭ S85°37'23"W
103.61' |
| ④ Δ=86°23'23"
L=21.62' | ⑮ S07°38'52"W
72.08' |
| ⑤ S86°31'44"W
58.70' | ⑯ S02°43'04"E
17.99' |
| ⑥ N03°26'31"E(R) | ⑰ S85°37'23"W
7.99' |
| ⑦ S32°09'04"W(R)
R=28.18' | ⑱ S03°48'27"E
31.83' |
| ⑧ Δ=28°42'32"
L=14.12' | ⑲ S85°22'15"W(R) |
| ⑨ N41°45'18"E(R) | ⑳ S05°59'59"E(R)
R=12.57' |
| ⑩ S87°11'31"W(R)
R=10.41' | ㉑ Δ=88°37'46"
L=19.44" |
| ⑪ Δ=45°26'13"
L=8.26' | |



LEGEND

APN ASSESSOR'S
PARCEL NUMBER
R/W RIGHT OF WAY
P. PARCEL
P.O.B. POINT OF BEGINNING
OFFER OF
IMPROVEMENTS
PARCEL

LOT G
APN 8719A-010
TONI STONE CROSSING
N85°37'31"E 139.25'

LOT F
APN 8719A-009
TONI STONE CROSSING

LOT E
APN 8719B-003
TONI STONE CROSSING

LOT D
APN 8719D-001
BRIDGEVIEW WAY

LOT 4
APN
8719C-001

LOT B
APN 8719C-002
DR. MAYA ANGELOU LANE

LOT 2
APN 8719C-003

**P.4
PORTION
OF LOT J**

LOT J
APN
8719A-006

P.3 LOT H
APN 8719C-004
CHANNEL STREET

LOT I
APN 8719A-004

PROPOSED R/W LINE
EXISTING R/W LINE

THIRD STREET (WIDTH VARIES)

OFFER OF IMPROVEMENTS – PORT

MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

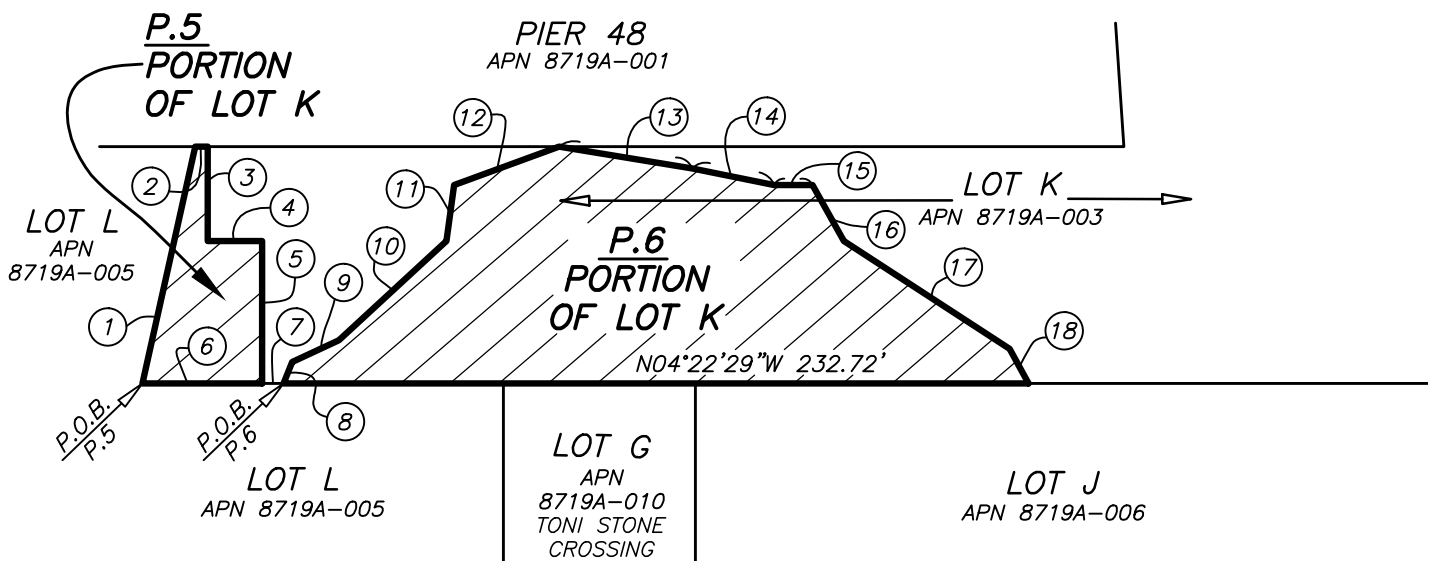
BY JP CHKD. BR DATE 2/6/25 SCALE 1"=100'± SHEET 2 OF 8 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg


PLAT TO ACCOMPANY LEGAL DESCRIPTION

- | | | |
|-------------------------|-------------------------|-------------------------|
| ① S81°50'43"E
75.81' | ⑧ S79°46'13"E 2.29' | ⑬ S56°25'54"W
20.05' |
| ② S04°22'29"E
3.98' | ⑨ S36°09'20"E 16.29' | ⑭ S28°39'43"W
61.81' |
| ③ S85°37'31"W
29.50' | ⑩ S47°09'24"E 49.63' | ⑮ S57°09'49"W
12.29' |
| ④ S04°22'29"E
16.93' | ⑪ S86°31'15"E 17.67' | |
| ⑤ S85°37'31"W
44.50' | ⑫ S24°26'16"E
34.98' | |
| ⑥ N04°22'29"W
37.35' | ⑬ S05°00'32"W
42.06' | |
| ⑦ S04°22'29"E
6.74' | ⑭ S06°57'39"W
26.16' | |
| | ⑮ S04°22'29"E
12.00' | |



DETAILS P.5 & P.6

LEGEND

- APN ASSESSOR'S
PARCEL NUMBER
- P. PARCEL
- P.O.B. POINT OF BEGINNING
-  OFFER OF
IMPROVEMENTS
PARCEL

OFFER OF IMPROVEMENTS – PORT

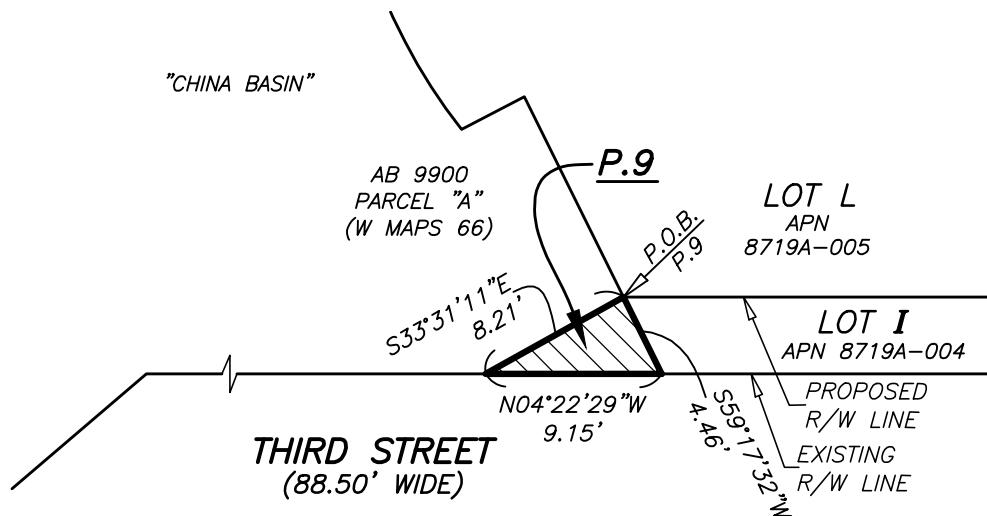
MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE 1"=60' SHEET 3 OF 8 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg


PLAT TO ACCOMPANY LEGAL DESCRIPTION



DETAIL P.9

SCALE: 1"=10'

LEGEND

APN	ASSESSOR'S PARCEL NUMBER
AB	ASSESSOR'S BLOCK
R/W	RIGHT OF WAY
P.	PARCEL
P.O.B.	POINT OF BEGINNING
	OFFER OF IMPROVEMENTS PARCEL

OFFER OF IMPROVEMENTS – PORT

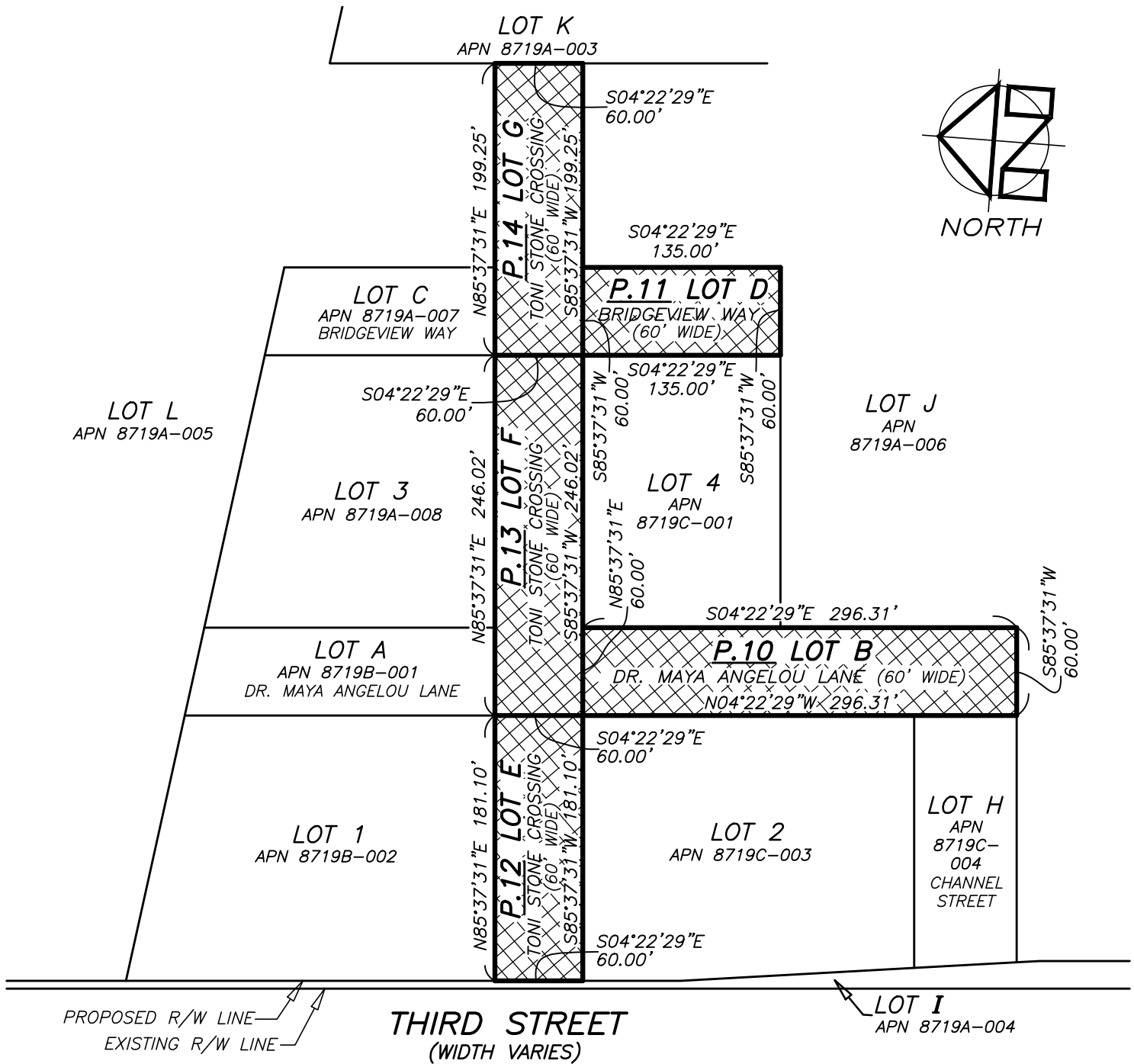
MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE 1"=10' SHEET 4 OF 8 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg

PLAT TO ACCOMPANY LEGAL DESCRIPTION



LEGEND

APN	ASSESSOR'S PARCEL NUMBER
R/W	RIGHT OF WAY
P.	PARCEL



OFFER OF IMPROVEMENTS
PARCEL WITHIN CITY
ACCEPTED PORT STREETS

OFFER OF IMPROVEMENTS – PORT

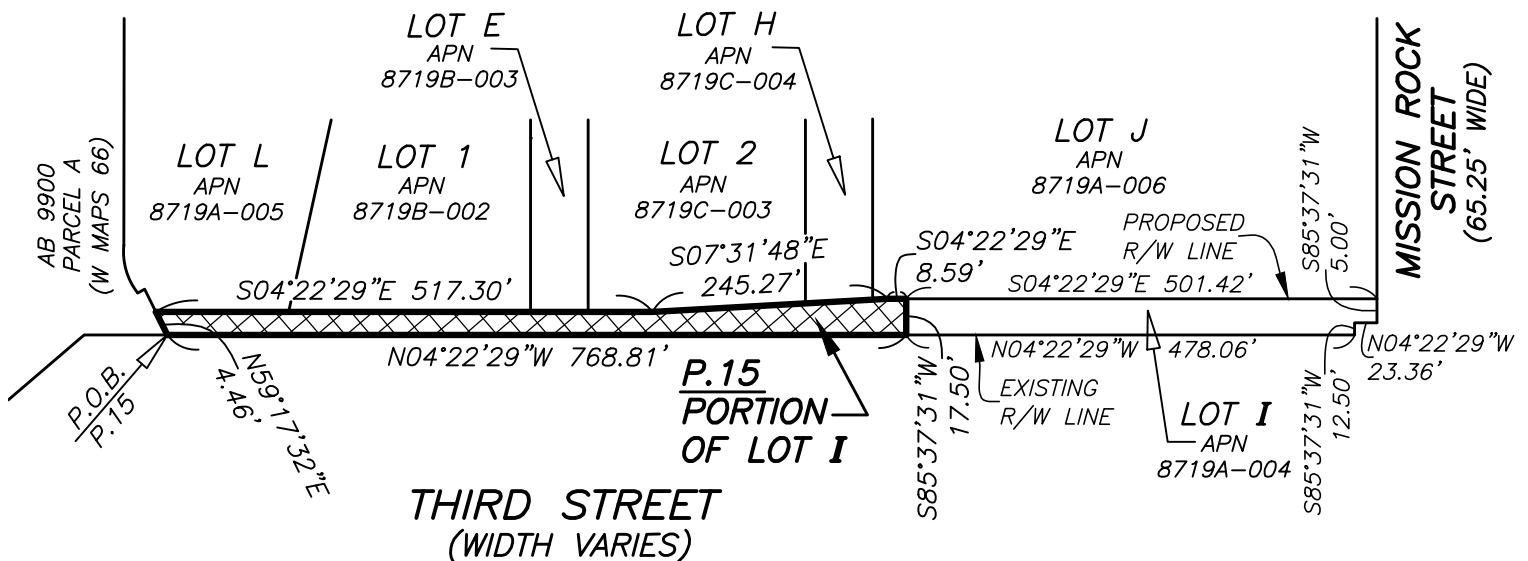
MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE 1"=100' SHEET 5 OF 8 JOB NO. S-9229


MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg

PLAT TO ACCOMPANY LEGAL DESCRIPTION



LEGEND

APN	ASSESSOR'S PARCEL NUMBER
AB	ASSESSOR'S BLOCK
R/W	RIGHT OF WAY
P.	PARCEL
P.O.B.	POINT OF BEGINNING
	OFFER OF IMPROVEMENTS PARCEL WITHIN CITY ACCEPTED PORT STREETS

OFFER OF IMPROVEMENTS — PORT

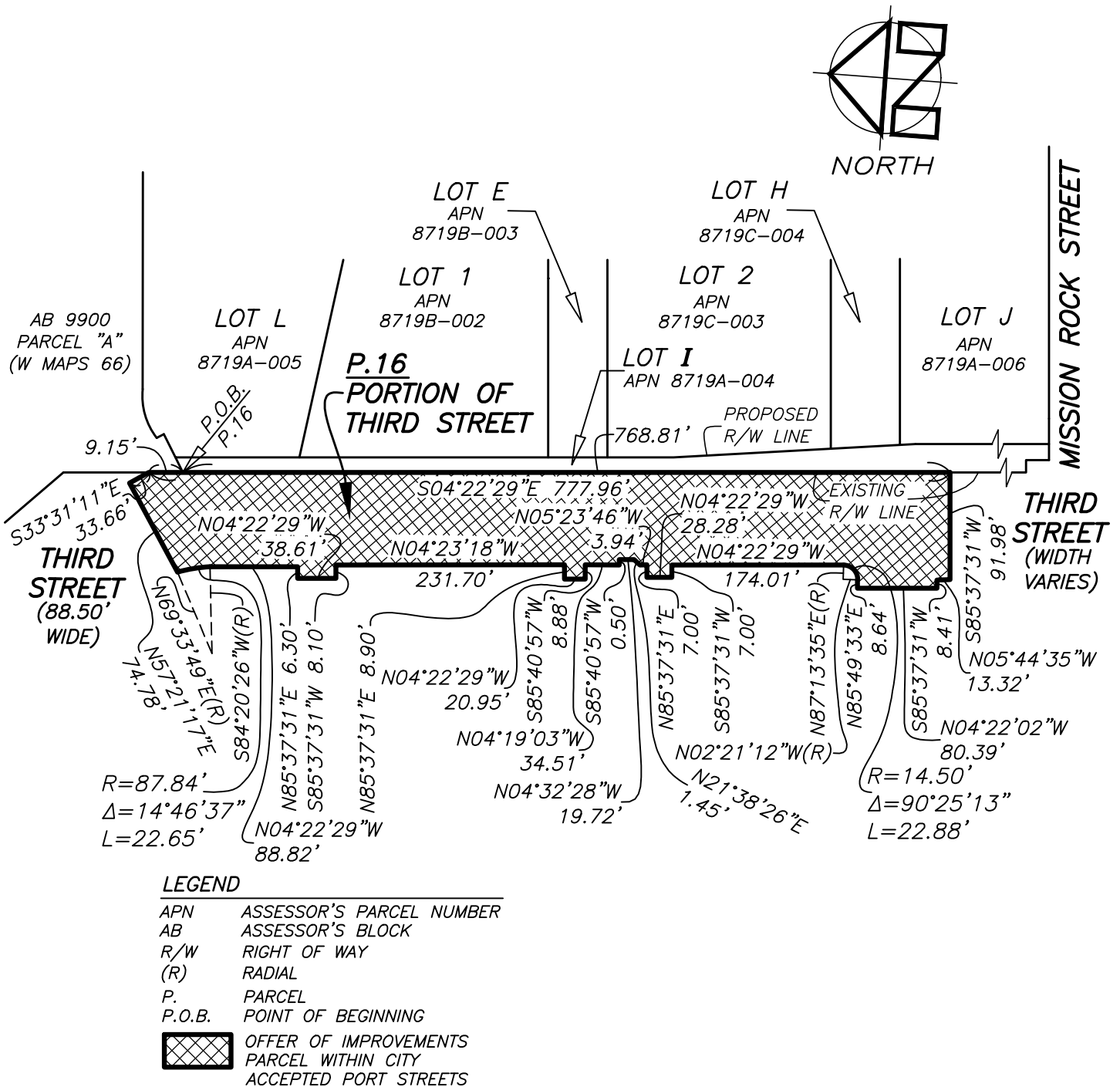
MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE NONE SHEET 6 OF 8 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg

PLAT TO ACCOMPANY LEGAL DESCRIPTION



OFFER OF IMPROVEMENTS — PORT

MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE NONE SHEET 7 OF 8 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg

PLAT TO ACCOMPANY LEGAL DESCRIPTION

LOT INFORMATION TABLE

PARCEL	LOT	ASSESSOR'S PARCEL NUMBER	AREA
P.1	LOT A	APN 8719B-001	12,303 SQ.FT.
P.2	LOT C	APN 8719A-007	9,023 SQ.FT.
P.3	LOT H	APN 8719C-004	11,927 SQ.FT.
P.4	PORTION OF LOT J	APN 8719A-006	27,260 SQ.FT.
P.5	PORTION OF LOT K	APN 8719A-003	1,656 SQ.FT.
P.6	PORTION OF LOT K	APN 8719A-003	10,775 SQ.FT.
P.7	PORTION OF LOT L	APN 8719A-005	173,963 SQ.FT.
P.8	PORTION OF PIER 48	APN 8719A-001	2,405 SQ.FT.
P.9	_____	AB 9900	18 SQ.FT.
P.10	LOT B	APN 8719C-002	17,779 SQ.FT.
P.11	LOT D	APN 8719D-001	8,100 SQ.FT.
P.12	LOT E	APN 8719B-003	10,866 SQ.FT.
P.13	LOT F	APN 8719A-009	14,761 SQ.FT.
P.14	LOT G	APN 8719A-010	11,955 SQ.FT.
P.15	PORTION OF LOT I	APN 8719A-004	4,848 SQ.FT.
P.16	PORTION OF THIRD STREET	_____	64,037 SQ.FT.

OFFER OF IMPROVEMENTS – PORT

MISSION ROCK
SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 2/6/25 SCALE NONE SHEET 8 OF 8 JOB NO. S-9229

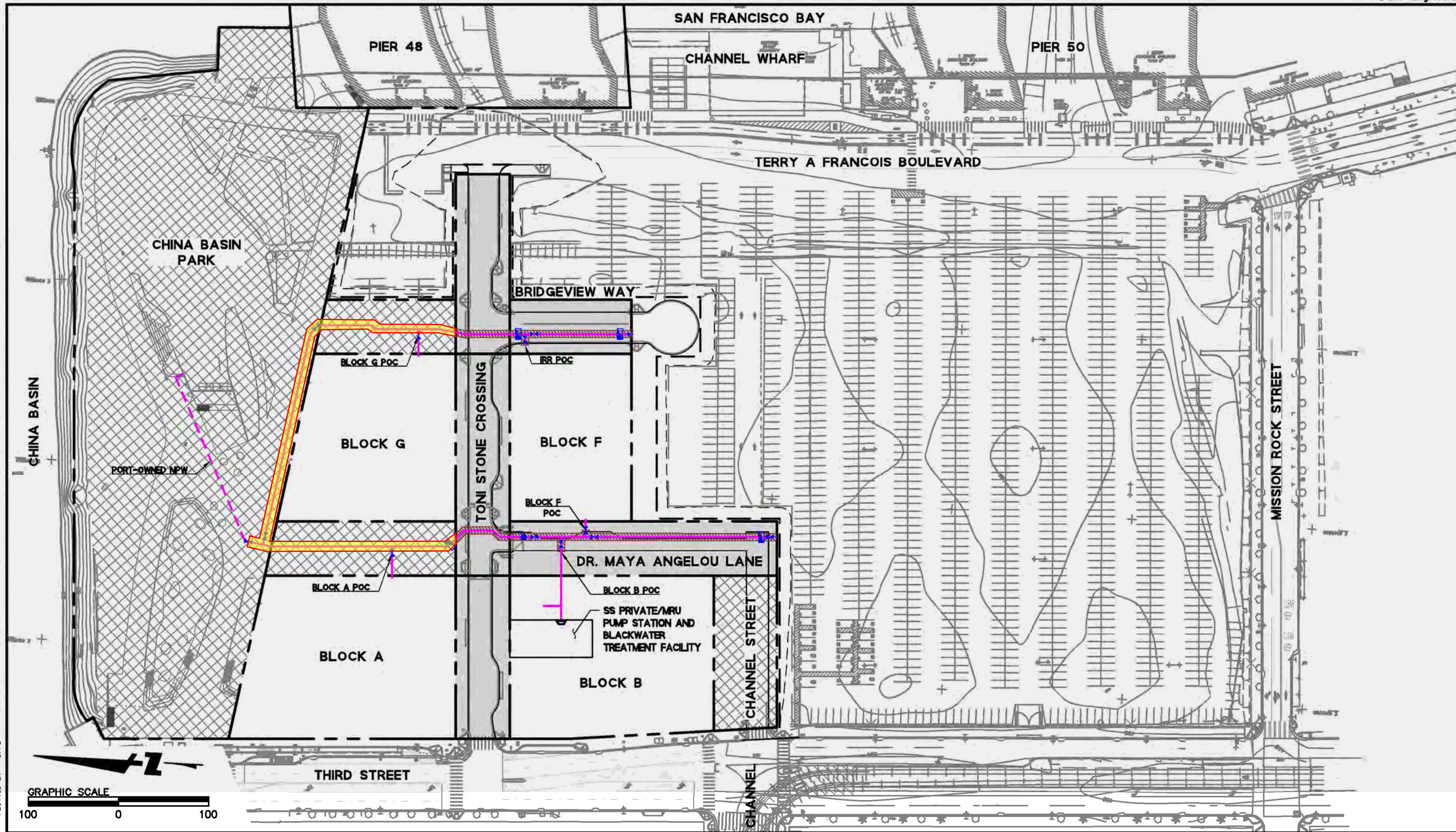
MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9229E-OFFER OF IMPROVEMENTS.dwg

EXHIBIT B

MRU Low-Pressure Water Facilities

DRAWING NAME: \\BKF-01\vol14\2008\080006 Mission Rock\ENG\Exhibits\22_0330 MRU Encroachment Permit\CAD\PHASE 1\Figure 2 Proposed Non-Potable Water System_P1.dwg
PLOT DATE: 08-22-22
PLOT BY: err



- LEGEND**
- PARCEL BOUNDARY
 - ▨ PARKS AND OPEN SPACE
 - ▬ PUBLIC ROW

- PRIVATE NPW
- - - PORT-OWNED NPW
- ▨ PERMIT AREA (SFPW ROW)
- GATE VALVE
- AIR RELEASE VALVE
- △ BLOW OFF VALVE

DATE: 08/22/2022
SCALE: 1"=100'
DESIGN: JW
DRAWN BY: JM/SH
APPROVED: JD
JOB NO: 20080006



MISSION ROCK PARTNERS
24 WILLIE MAYS PLAZA
SAN FRANCISCO, CA 94107
415/488-6676
415/488-6678 (FAX)
BKF ENGINEERS
150 CALIFORNIA STREET, STE 600
SAN FRANCISCO, CA 94111
415/930-7900
415/930-7948 (FAX)

MISSION ROCK REDEVELOPMENT

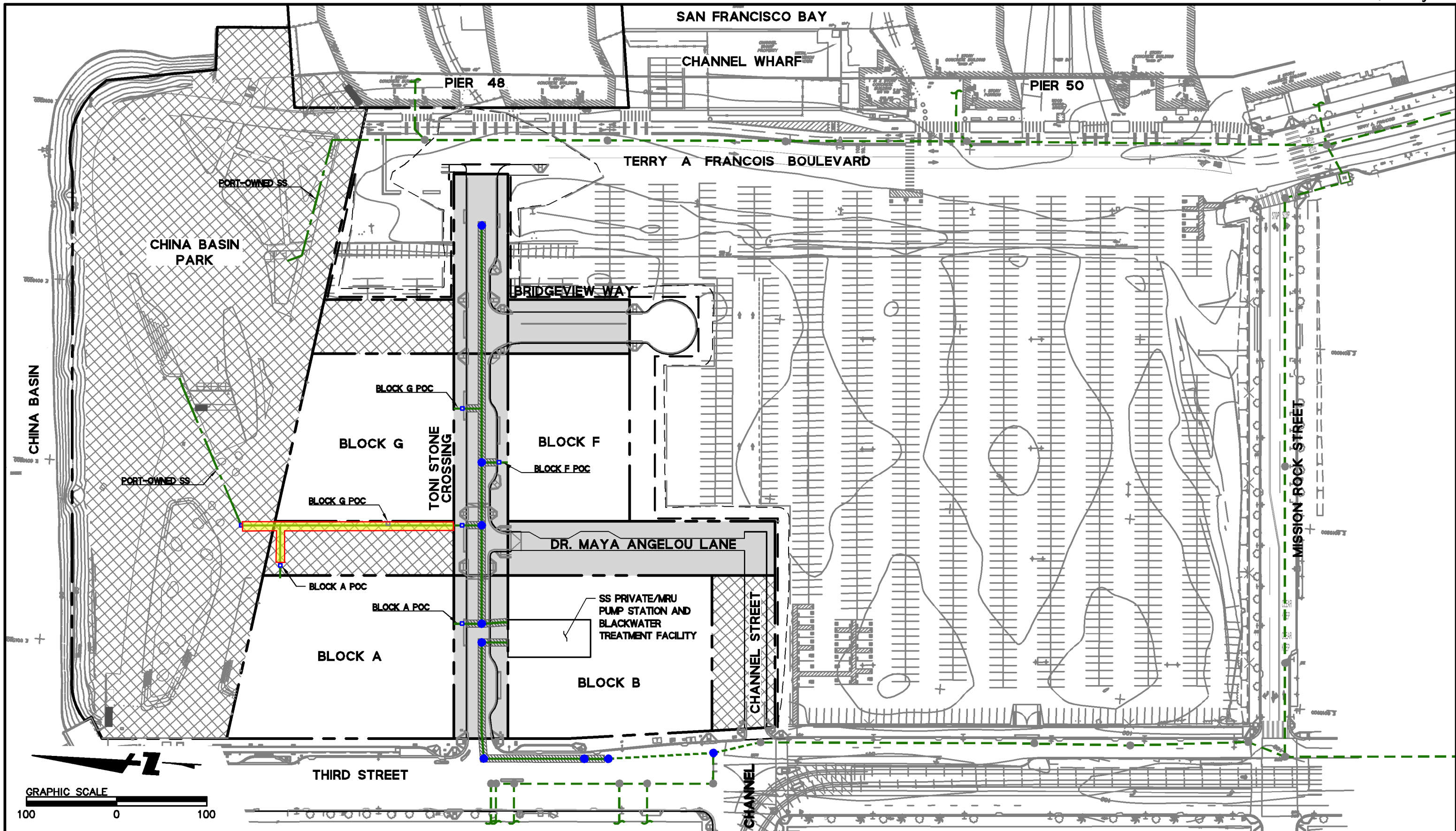
PORT LICENSE AREA FOR MRU

NON-POTABLE WATER SYSTEM

EXHIBIT C

MRU Sanitary Sewer Facilities

DRAWING NAME: \\BKF-efi\vol1\4\2008\080006 Mission Rock\ENG\Exhibits\22_0330 MRU Encroachment Permit\CAD\PHASE 1\Figure 1 Sanitary Sewer System Ownership_P1.dwg
PLOT DATE: 08-24-22 PLOTTED BY: arf



LEGEND --- PARCEL BOUNDARY [Hatched Box] PARKS AND OPEN SPACE [Solid Gray Box] PUBLIC ROW	[Yellow Box] LICENSE AREA (SF PORT) [Dashed Green Line] EXISTING SS [Solid Green Line] PRIVATE SS [Dashed Green Line] PORT-OWNED SS [Dotted Green Line] SFPUC-OWNED SS [Hatched Box] PERMIT AREA (SFPW ROW) ● EX SSMH ● PR SSMH □ PR SSCO	DATE: 08/22/2022 SCALE: 1"=100' DESIGN: JW DRAWN BY: JM/SH APPROVED: JD JOB NO: 20080006	MISSION ROCK PARTNERS 24 WILLIE MAYS PLAZA SAN FRANCISCO, CA 94107 415/468-6676 415/468-6678 (FAX) BKF ENGINEERS 150 CALIFORNIA STREET, STE 600 SAN FRANCISCO, CA 94111 415/930-7900 415/930-7948 (FAX)	MISSION ROCK REDEVELOPMENT PORT LICENSE AREA FOR MRU SANITARY SEWER SYSTEM
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GENERAL PLAN CONSISTENCY DETERMINATION AND CEQA FINDINGS

February 6, 2025

Ms. Carla Short
Director
San Francisco Public Works
49 South Van Ness Avenue, Suite 1600
San Francisco, CA 94103

Ms. Elaine Forbes
Director
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111

Project Title: Mission Rock Project Phase 1 and Phase 1A – Acceptance of Public Improvements; Issuance of Encroachment Permits; Approval of Licenses, Leases, Open Space Management Agreements, and Other Agreements; Approval of Public Works Code Amendments; and Other Actions

Assessor's Blocks(s)/Lot(s): 8719A/005, 8719C/002, 8719D/001, 8719B/003, 8719A/009, 8719D/001, 8719B/003, 8719A/010, 8719A/004

Design Review Approval No.(s): 2013.0208ENV, DVA, MAP, PCA

Zoning District(s): Heavy Industrial (M2), Mission Rock Mixed Use (MR-MU) Zoning Districts; 40-Mission Rock, 60-Mission Rock, 90/120-Mission Rock, 90-Mission Rock, 100-Mission Rock, 120-Mission Rock, 190-Mission Rock, 240-Mission Rock, 40-X, and OS Height/Bulk Districts

Staff Contact: Elizabeth Purl, 628.652.7529, elizabeth.purl@sfgov.org

Dear Director Short and Director Forbes:

This letter addresses numerous proposed actions for consideration by the Port Commission and the Board of Supervisors regarding Phase 1 and Phase 1A of the Mission Rock project ("Project") on property located on Assessor's Blocks/Lots 8719A/005, 8719C/002, 8719D/001, 8719B/003, 8719A/009, 8719D/001, 8719B/003, 8719A/010, and 8719A/004.

Regarding Phase 1 and Phase 1A of the Project, the Port Commission and/or the Board of Supervisors will consider taking the following actions:

- Approval of the China Basin Park lease and loan agreement ("CBP Lease") for the management and operation of China Basin Park, and recommendation that the Board of Supervisors approve the CBP Lease;
- Approval of the license to authorize Pacific Gas and Electric ("PG&E") to provide power to the 3rd Street Bridge "Pilot House" and the "Absolving Services Agreement" and recommendation that the Board of Supervisors approve the same;
- Approval of the license to authorize PG&E to provide gas service to buildings located on Lot 3 and Lot 4 of the

Project and recommendation that the Board of Supervisors approve the same;

- Approval of a management agreement (“Open Space Management Agreement”) for the management and maintenance of certain Port infrastructure and the Mission Rock open space, and recommendation that the Board of Supervisors approve the Open Space Management Agreement;
- Approval of the license with Mission Rock Utilities (“MRU License”) for the operation and maintenance of private district utilities within China Basin Park and Mission Rock open space, and recommendation that the Board of Supervisors approve the MRU License;
- Approval of the license to place, operate, and maintain electrical lines within Port-owned conduit that facilitates service to mechanical bollards located in the Bridgeview Paseo and Dr. Maya Angelou Paseo (“Bollard License”);
- Approval of a sponsorship agreement between the manager under the Open Space Management Agreement and China Basin Ballpark Company to install special pavers within a portion of the Bay Trail in China Basin Park pursuant to Port Permit Number B-2025-0002;
- Recommendation that the Board of Supervisors approve legislation amending the Public Works Code to memorialize the Port’s exercise of permitting of certain retail activations on City and County of San Francisco (“City”) sidewalks;
- Acceptance of the Offer of Improvements for infrastructure shown in the plans for Street Improvement Permit (“SIP”) No. 20IE-00486, approved by Public Works, Bureau of Street Use and Mapping, on October 1, 2020 (“Plans”) that the City will maintain, including street and utility improvements and as further defined in the latest version of the project’s Maintenance Matrix on file with Public Works as of the date of this letter, and dedication of the same to public use and designation of the same as open public right-of-way for street and roadway purposes subject to specified conditions;
- Approval of the public right-of-way widths, sidewalk widths, and street grades;
- Approval of amendments to the Public Works Code to memorialize the Port’s exercise of permitting authority for certain retail activations on City sidewalks;
- Approval of amendments to the Public Works Code to ensure that any excavation of or in proximity to lightweight cellular concrete (“LCC”) in the Mission Rock Special Use District be performed according to Public Works standards and requirements and according to permits issued by Public Works, including for excavation work that can be completed within 24 hours;
- Authorization of the Public Works Director to execute the Absolving Services Agreement with PG&E;
- Approval of a Master Encroachment Permit for Mission Rock Utilities (“MRU”) to permit MRU to maintain the custom improvements and other encroachments in the public right-of-way including privately-owned district energy lines, non-potable water, and sanitary sewer lines to occupy public rights-of-way and be maintained by MRU;
- Approval of the Port Encroachment Interdepartmental Master Encroachment Permit (“IMEP”), to allow improvements that will be owned and maintained by the Port to be permitted as encroachments to occupy public rights-of-way, as described in the Port IMEP, Maintenance Matrix, and Jurisdictional Memorandum of

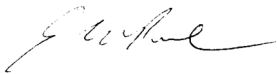
Understanding between the City and the Port; and delegation of authority to the Public Works Director to allow assignment to the maintenance contractor or the owners' association responsibility and liability for compliance with Public Works Code Section 706, provided that the Port also approve such assignment and subject to the condition that if allocated to an Owners' Association, the maintenance responsibilities must be addressed in the CC&Rs as a binding requirement on the Owners' Association and its successors;

- Approval of a major encroachment permit to enable the Developer to maintain LCC monitoring instrument encroachments that will measure the settlement of LCC installed around or below the sidewalks and roadways in the Phase 1A Project area; and
- Other related actions required to implement the Project.

On October 5, 2017, the San Francisco Planning Commission issued a series of approvals for the Mission Rock (i.e., Seawall Lot 337 / Pier 48) Project (Planning Department Records 2013.0208ENV, DVA, MAP, and PCA). These approval actions included certification of the Final Environmental Impact Report ("FEIR") through Motion No. 20017, adoption of California Environmental Quality Act ("CEQA") findings through Motion No. 20018, and adoption of General Plan and Planning Section 101.1 consistency findings through Resolution No. 20019. The Board of Supervisors subsequently adopted the CEQA Findings through Resolution No. 36-18.

Planning Department Staff has reviewed the Plans and considered the Port Commission actions and the Board of Supervisors actions identified in this letter and finds them consistent with the Planning Commission's approvals for the Project. Therefore, the Planning Department Staff finds that the Board of Supervisors actions and the Port Commission actions identified in this letter are covered with the scope of the FEIR and the CEQA findings of Planning Commission Motion Nos. 20017 and 20018 and there is no need for subsequent environmental analysis. In addition, the Planning Department Staff finds that these actions are, on balance, consistent with and covered within the scope of the General Plan and Planning Code Section 101.1 Consistency Findings of Planning Commission Resolution No. 20019. For purposes of the Board of Supervisors actions and Port Commission actions identified in this letter, the Planning Department Staff relies on and incorporates by reference these Planning Commission Motions and their associated findings, copies of which are attached to this letter.

Sincerely,



Elizabeth Purl
Senior Planner

cc: (via email)

Wyatt Donnelly-Landolt, Development Projects, Por of San Francisco
Shawna Gates, Infrastructure Task Force, Public Works

Attachments:

Planning Commission Motion No. 20017 (October 5, 2017)
Planning Commission Motion No. 20018 (October 5, 2017)
Planning Commission Resolution No. 20019 (October 5, 2017)



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 20017

HEARING DATE: OCTOBER 5, 2017

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.: 2013.0208E
Project Title: Seawall Lot 337 and Pier 48 Mixed-Use Project
Zoning: MB-OS (Mission Bay-Open Space) and M-2 (Heavy Industrial)
Mission Rock Height and Bulk District
Block/Lot: Assessor's Block 8719/Lot 006, and Block 9900/Lot 048.
Project Sponsor: Phil Williamson
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
(415) 274-0453, phil.williamson@sfport.com

Jack Bair
Seawall Lot 337 LLC
24 Willie Mays Plaza
San Francisco, CA 94107
(415) 972-1755, jbair@sfgiants.com
Staff Contact: Tania Sheyner – (415) 575-9127
tania.sheyner@sfgov.org

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED SEAWALL LOT 337 AND PIER 48 MIXED-USE PROJECT.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the final Environmental Impact Report identified as Case No. 2013.0208E, the "Seawall Lot 337 and Pier 48 Mixed-Use Project" (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*) (hereinafter "CEQA"), the State CEQA Guidelines (Cal. Code Regs. Title 14, Section 15000 *et seq.*) (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on December 11, 2013.


- B. The Department held a public scoping meeting on January 13, 2014, in order to solicit public comment on the scope of the Project's environmental review.
 - C. On April 26, 2017, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
 - D. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site on April 26, 2017.
 - E. On April 26, 2017, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and through the State Clearinghouse.
 - F. A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on April 26, 2017.
- 2. The Commission held a duly advertised public hearing on said DEIR on June 1, 2017, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on June 12, 2017.
 - 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 47-day public review period for the DEIR, prepared revisions to text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on September 20, 2017, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
 - 4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document, all as required by law.
 - 5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.

6. On October 5, 2017, the Commission reviewed and considered the information contained in the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31.
7. The Commission hereby does find that the FEIR concerning File No. 2013.0208E reflects the independent judgement and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR that would require recirculation of the document pursuant to CEQA Guidelines Section 15088.5, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA, the CEQA Guidelines, and Chapter 31.
8. The Commission, in certifying the completion of said FEIR, hereby does find that the project described in the EIR would have the following significant unavoidable environmental impacts, which cannot be mitigated to a level of insignificance:
 - A. TR-4: The proposed Project would result in an adverse impact by increasing ridership by more than 5 percent on two individual Muni routes that exceed 85 percent capacity utilization under baseline conditions.
 - B. TR-6: The proposed Project would result in an adverse impact related to a substantial increase in transit delays on Third Street between Channel Street and Mission Rock Street.
 - C. TR-9: The proposed Project would have significant impacts on pedestrian safety at the unsignalized intersections of Fourth Street/Mission Rock Street and Fourth Street/Long Bridge Street.
 - D. C-TR-4: The proposed Project would contribute considerably to a significant cumulative transit impact because it would increase ridership by more than 5 percent on one individual Muni route that would exceed 85 percent capacity utilization.
 - E. C-TR-6: The proposed Project would contribute considerably to significant cumulative impacts related to transit delays.
 - F. C-TR-7: The proposed Project would contribute considerably to significant cumulative pedestrian impacts.

- G. **NOI-1:** Construction of the proposed Project would generate noise levels in excess of standards or result in substantial temporary increases in noise levels.
- H. **NOI-2:** Operation of the proposed Project could result in the exposure of persons to or generation of noise levels in excess of the San Francisco Noise Ordinance or a substantial temporary, periodic or permanent increase in ambient noise levels in the Project vicinity, above levels existing without the Project.
- I. **NOI-3:** Construction of the proposed Project would expose persons to or generate excessive ground-borne vibration or ground-borne noise levels related to annoyance. Construction of the proposed Project could expose persons to or generate excessive ground-borne vibration or ground-borne noise levels related to damage to buildings.
- J. **C-NOI-1:** Construction activities for the proposed Project, in combination with other past, present, and reasonable future projects in the city, would result in a substantial temporary increase in noise or noise levels in excess of the applicable local standards.
- K. **C-NOI-2:** Construction activities associated with Project-related development, in combination with other past, present, and reasonable future projects in the city, would expose sensitive receptors to excessive ground-borne vibration related to annoyance and could result in similar impacts related to damage to buildings. (Significant and Unavoidable for Annoyance).
- L. **C-NOI-3:** Operation of the proposed Project, in combination with other past, present, and reasonable future projects in the city, would result in the exposure of persons to noise in excess of the applicable local standards or a substantial permanent ambient noise level increase in the Project vicinity.
- M. **AQ-1:** Construction of the proposed Project would generate fugitive dust and criteria air pollutants, which for criteria air pollutants but not fugitive dust, would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. (Significant and Unavoidable with Mitigation for Criteria Air Pollutants).
- N. **AQ-2:** During Project operations, the proposed Project would result in emissions of criteria air pollutants at levels that would violate an air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.

- O. **AQ-3:** During combined Project construction and operations, the proposed Project would result in emissions of criteria air pollutants at levels that would violate an air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.
 - P. **C-AQ-1:** The proposed Project's construction and operation, in combination with other past, present, and reasonable future projects, would contribute to cumulative regional air quality impacts.
 - Q. **WS-1:** The proposed Project would alter wind in a manner that would substantially affect public areas.
 - R. **C-WS-1:** The proposed Project, in combination with past, present, and reasonably foreseeable future projects, would alter wind in a manner that would substantially affect public areas.
9. The Commission reviewed and considered the information contained in the FEIR prior to approving the proposed Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of October 5, 2017.


Jonas P. Ionin
Commission Secretary

AYES: Hillis, Richards, Fong, Johnson, Koppel, Melgar, Moore

NOES: None

ABSENT: None

ADOPTED: October 5, 2017



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 20018

HEARING DATE: OCTOBER 5, 2017

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

<i>Case No.:</i>	2013.0208 ENV	
<i>Project Name:</i>	Mission Rock (aka Seawall Lot 337 and Pier 48 Mixed-Use Project)	Fax: 415.558.6409
<i>Existing Zoning:</i>	Mission Bay Open Space (MB-OS); M-2 (Heavy Industrial) Zoning District; Mission Rock Height and Bulk Districts	Planning Information: 415.558.6377
<i>Block/Lot:</i>	8719/ 006; 9900/048	
<i>Proposed Zoning:</i>	Mission Rock Mixed-Use District / Mission Rock Special Use District; Mission Rock Height and Bulk District	
<i>Project Sponsor:</i>	Port of San Francisco and SWL 337 Associates, LLC	
<i>Staff Contact:</i>	Mat Snyder – (415) 575-6891 mathew.snyder@sfgov.org	

ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS OF FACT, FINDINGS REGARDING SIGNIFICANT IMPACTS AND SIGNIFICANT AND UNAVOIDABLE IMPACTS, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS RELATED TO APPROVALS FOR THE MISSION ROCK (AKA SEAWALL LOT 337 AND PIER 48 MIXED-USE PROJECT) ("PROJECT"), LOCATED ON ASSESSOR'S BLOCK 8719 LOT 006 AND BLOCK 9900 LOTS 048.

PREAMBLE

The project sponsor, Seawall Lot 337 Associates, LLC, applied for environmental review of a mixed-use phased development at Seawall Lot 337, and rehabilitation and reuse of Pier 48 ("Project") on May 31, 2013.

The Project is located on an approximately 28-acre project site that consists of the following: the 14.2-acre Seawall Lot 337; the 0.3-acre strip of land on the south side of Seawall Lot 337, referred to as Parcel P20; the 6.0-acre Pier 48; the existing 2.2-acre China Basin Park; and 5.4 acres of streets and access areas within or adjacent to the boundaries of Seawall Lot 337 and Pier 48. The project site is adjacent to the Mission Bay neighborhood of the city and the Mission Bay South Redevelopment Area. The site is currently used for open space (China Basin Park); a surface parking lot (Seawall Lot 337 and P20); and indoor parking, storage, warehouse uses and special events (Pier 48).

The Project would include 2.7 to 2.8 million gross square feet ("gsf") of mixed-uses on 11 proposed development blocks on Seawall Lot 337, with building heights ranging from 90 feet to a maximum of 240 feet. The mixed use development would comprise approximately 1.1 to 1.6 million gsf of residential uses (estimated at 1,000 to 1,600 units, consisting of both market-rate and affordable housing), approximately 972,000 to 1.4 million gsf of commercial uses, and 241,000 to 244,800 gsf of active/retail uses on the lower floors of each block. Additionally, the Project would include approximately 1.1 million gsf of

aboveground and underground parking (approximately 3,100 parking spaces) and rehabilitation of 242,500 gsf of space within Pier 48 to provide industrial, restaurant, active/retail, tour, exhibition, and meeting space for reuse by an industrial use, specifically analyzed as a proposed brewery. The Project would also include a total of approximately 8.0 acres of open space. The Project is more particularly described in Attachment A.

Pursuant to and in accordance with the requirements of Section 21094 of CEQA and Sections 15063 and 15082 of the CEQA Guidelines, the San Francisco Planning Department, as lead agency, published and circulated a Notice of Preparation ("NOP") on December 11, 2013, that solicited comments regarding the scope of the environmental impact report ("EIR") for the proposed project. The NOP and its 30-day public review comment period were advertised in a newspaper of general circulation in San Francisco and mailed to governmental agencies, organizations and persons interested in the potential impacts of the proposed project. The Planning Department held a public scoping meeting on January 13, 2014, in the Bayside Room at the Port of San Francisco, Pier 1, The Embarcadero.

During the approximately 51-day public scoping period that ended on January 31, 2014, the Planning Department accepted comments from agencies and interested parties who identified environmental issues that should be addressed in the EIR. On the basis of public comments submitted in response to the NOP and at the public scoping meeting, the Planning Department found that potential areas of controversy and unresolved issues for the proposed project included: consistency of the Project with the Mission Bay Plan, the San Francisco Waterfront Plan, and the Mission Bay development guidelines; potential impacts along specific viewpoints, the waterfront and surrounding areas; the scale and height of the proposed project and the future use of Parcel P20; provision of affordable housing and population density; potential impacts on submerged cultural resources in the project area; increases in traffic and traffic congestion, connections to the City's transportation network, lack of public transportation in the area, pedestrian safety, traffic during game days, fair share contributions, and potential impacts of increased traffic on emergency vehicle delay; potential noise impacts from additional residents; potential greenhouse gas ("GHG") impacts, adequate mitigation measures for GHG impacts, and inclusion of a GHG emissions analysis consistent with Assembly Bill 32, the California Global Warming Solutions Act; potential shadow impacts along the waterfront, China Basin Park, and the proposed Mission Rock Square; potential impacts on loss of green space, and preservation of public lands for public and recreational use; adequacy of water and sewer systems with the addition of the proposed project, including a Water Supply Assessment; and potential impacts on the marine environment, as well as state- and federally listed species, and pile-driving impacts on fish, birds, and mammals. Comments received during the scoping process also were considered in preparation of the Draft EIR.

In June 2014, subsequent to the publication of the NOP, the City's voters approved Proposition B (Voter Approval for Waterfront Development Height Increases), which states that voter approval is required for any height increases on property, such as the project site, within the jurisdiction of the Port of San Francisco. Accordingly, on November 3, 2015, the City's voters approved Proposition D (the Mission Rock Affordable Housing, Parks, Jobs, and Historic Preservation Initiative), which amended the height and bulk restrictions for the project site by establishing the Mission Rock Height and Bulk District. Under Proposition D, the proposed heights for buildings on some of the proposed development blocks are lower than originally contemplated in the NOP, and there have been no increases in the height, density or intensity of development for the proposed Project since publication of the NOP.

To allow for flexibility to respond to future market demands and conditions, the project sponsor proposes flexible zoning and land uses on 3 of the 11 proposed development blocks on Seawall Lot 337. Specifically, Blocks H, I, and J are proposed to be designated to allow either residential or commercial as

the predominant use above the lower-floor active/retail uses. The project sponsor would determine the primary land uses of the three flexible zoning blocks above the lower floor (i.e., residential or commercial) at the time of filing for design approvals for block development proposals. These flexible blocks are analyzed in the EIR as ranges and land use assumptions (High Commercial or High Residential).

The San Francisco Planning Department then prepared the Draft EIR, which describes the Project and the environmental setting, analyzes potential impacts, identifies mitigation measures for impacts found to be significant or potentially significant, and evaluates project variants and alternatives to the Draft EIR Project. The Draft EIR assesses the potential construction and operational impacts of the Project on the environment, and the potential cumulative impacts associated with the Project in combination with other past, present, and future actions with potential for impacts on the same resources. The analysis of potential environmental impacts in the Draft EIR utilizes significance criteria that are based on the San Francisco Planning Department Environmental Planning Division guidance regarding the environmental effects to be considered significant. The Environmental Planning Division's guidance is, in turn, based on CEQA Guidelines Appendix G, with some modifications.

The Planning Department published a Draft EIR for the project on April 26, 2017, and circulated the Draft EIR to local, state, and federal agencies and to interested organizations and individuals for public review. On April 26, 2017, the Planning Department also distributed notices of availability of the Draft EIR; published notification of its availability in a newspaper of general circulation in San Francisco; posted the notice of availability at the San Francisco County Clerk's office; and posted notices at locations within the project area. The Planning Commission held a public hearing on June 1, 2017, to solicit testimony on the Draft EIR during the public review period. The Draft EIR public review period ended on June 12, 2017. A court reporter, present at the public hearing, transcribed the oral comments verbatim, and prepared written transcripts. The Planning Department also received written comments on the Draft EIR, which were sent through mail, fax, hand delivery, or email.

The San Francisco Planning Department then prepared the Comments and Responses ("C&R"). The C&R document was published on September 21, 2017, and includes copies of all of the comments received on the Draft EIR and written responses to each comment.

The C&R document provided additional, updated information, clarification and modifications on issues raised by commenters, as well as Planning Department staff-initiated text changes to the Draft EIR. The Final EIR, which includes the Draft EIR, the C&R document, the Appendices to the Draft EIR and C&R document, and all of the supporting information, has been reviewed and considered. The C&R documents and appendices and all supporting information do not add significant new information to the Draft EIR that would individually or collectively constitute significant new information within the meaning of Public Resources Code Section 21092.1 or CEQA Guidelines Section 15088.5 so as to require recirculation of the Final EIR (or any portion thereof) under CEQA. The C&R documents and appendices and all supporting information contain no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project, but that was rejected by the project sponsor, or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

On October 5, 2017, the Planning Commission by Motion No. 20017, found that the Final EIR was adequate, accurate, and objective, reflected the independent judgment of the Planning Commission and that the C&R document contains no significant revisions to the Draft EIR, and adopted findings of significant impact associated with the Project and certified the completion of the Final EIR for the Project in compliance with CEQA, and the CEQA Guidelines and Chapter 31.

The Planning Department prepared proposed Findings, as required by CEQA, regarding the alternatives, mitigation measures and significant impacts analyzed in the Final EIR and overriding considerations for approving the Project and a proposed mitigation monitoring and reporting program ("MMRP"), attached as Exhibit 1 to Attachment A, which material was made available to the public and this Planning Commission for the Planning Commission's review, consideration and actions.

The Commission, in certifying the FEIR, found that the Project described in the FEIR will have the following significant and unavoidable environmental impacts:

- The proposed Project would result in an adverse impact by increasing ridership by more than 5 percent on two individual Muni routes that exceed 85 percent capacity utilization under baseline conditions.
- The proposed Project would result in an adverse impact related to a substantial increase in transit delays on Third Street between Channel Street and Mission Rock Street.
- The proposed Project would have significant impacts on pedestrian safety at the unsignalized intersections of Fourth Street/Mission Rock Street and Fourth Street/Long Bridge Street.
- The proposed Project would contribute considerably to a significant cumulative transit impact because it would increase ridership by more than 5 percent on one individual Muni route that would exceed 85 percent capacity utilization.
- The proposed Project would contribute considerably to significant cumulative impacts related to transit delays.
- The proposed Project would contribute considerably to significant cumulative pedestrian impacts.
- Construction of the proposed Project would generate noise levels in excess of standards or result in substantial temporary increases in noise levels.
- Operation of the proposed Project could result in the exposure of persons to or generation of noise levels in excess of the San Francisco Noise Ordinance or a substantial temporary, periodic or permanent increase in ambient noise levels in the Project vicinity, above levels existing without the Project.
- Construction of the proposed Project would expose persons to or generate excessive ground-borne vibration or ground-borne noise levels related to annoyance. Construction of the proposed Project could expose persons to or generate excessive ground-borne vibration or ground-borne noise levels related to damage to buildings.

- Construction activities for the proposed Project, in combination with other past, present, and reasonable future projects in the city, would result in a substantial temporary increase in noise or noise levels in excess of the applicable local standards.
- Construction activities associated with Project-related development, in combination with other past, present, and reasonable future projects in the city, would expose sensitive receptors to excessive ground-borne vibration related to annoyance and could result in similar impacts related to damage to buildings. (Significant and Unavoidable for Annoyance).
- Operation of the proposed Project, in combination with other past, present, and reasonable future projects in the city, would result in the exposure of persons to noise in excess of the applicable local standards or a substantial permanent ambient noise level increase in the Project vicinity.
- Construction of the proposed Project would generate fugitive dust and criteria air pollutants, which for criteria air pollutants but not fugitive dust, would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. (Significant and Unavoidable with Mitigation for Criteria Air Pollutants).
- During Project operations, the proposed Project would result in emissions of criteria air pollutants at levels that would violate an air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.
- During combined Project construction and operations, the proposed Project would result in emissions of criteria air pollutants at levels that would violate an air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.
- The proposed Project's construction and operation, in combination with other past, present, and reasonable future projects, would contribute to cumulative regional air quality impacts.
- The proposed Project would alter wind in a manner that would substantially affect public areas.
- The proposed Project, in combination with past, present, and reasonably foreseeable future projects, would alter wind in a manner that would substantially affect public areas.

The Planning Commission Secretary is the custodian of records for the Planning Department materials, located in the File for Case No. 2013.0208ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

On October 5, 2017, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted this Motion No. 20018, adopting CEQA findings, including a Statement of Overriding Considerations, and adopting an MMRP, and adopted other Motions and Resolutions with respect to the Project.

On October 5, 2017, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the various approvals necessary to implement the Project, including, but not limited to, Planning Code Text and Zoning Map Amendments, approval of the Mission Rock Design

Controls document, approval of a Development Agreement and made findings of General Plan consistency. (See Planning Commission Resolution and Motions numbers 20019, 20020, and 20021. The Planning Commission makes these findings and adopts the MMRP as part of each and all of these approval actions.

MOVED, that the Planning Commission has reviewed and considered the Final EIR and the record associated therewith, including the comments and submissions made to this Planning Commission and the Planning Department's responses to those comments and submissions, and based thereon, hereby adopts the Project Findings required by CEQA attached hereto as Attachment A including a statement of overriding considerations, and adopts the MMRP, included as Exhibit 1 to Attachment A, as a condition of approval for each and all of the approval actions set forth in the Resolutions and Motions described above.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on Thursday, October 5, 2017.



Jonas P. Ionin

Commission Secretary

AYES: Hillis, Richards, Fong, Johnson, Koppel, Melgar, Moore

NAYS: None

ABSENT: None

ADOPTED: October 5, 2017



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20019

HEARING DATE: OCTOBER 5, 2017

Case No.: **2013.0208 ENV/PCA/MAP/DVA**
Project Name: **Mission Rock (aka Seawall Lot 337 / Pier 48)**
Existing Zoning: **Mission Bay Open Space (MB-OS); M-2 (Heavy Industrial) Zoning District; Mission Rock Height and Bulk District**
Block/Lot: **8719/ 006; 9900/048**
Proposed Zoning: **Mission Mixed-Use Zoning District / Mission Rock Special Use District; Mission Rock Height and Bulk District**
Project Sponsor: **Port of San Francisco and SWL 337 Associates, LLC**
Staff Contact: **Mat Snyder – (415) 575-6891**
mathew.snyder@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE AMENDMENTS TO THE PLANNING CODE TO ESTABLISH THE MISSION ROCK MIXED-USE DISTRICT, THE MISSION ROCK SPECIAL USE DISTRICT, ALONG WITH OTHER RELATED MINOR CHANGES TO ARTICLE 2 AND ARTICLE 9 OF THE PLANNING CODE; AND BY AMENDING ZONING MAP ZN 08 BY DESIGNATING ASSESSOR'S BLOCK AND LOT: 8719/ 006 AND 9900/-48 AS PART OF THE MISSION ROCK MIXED-USE DISTRICT AND BY AMENDING SPECIAL USE DISTRICT MAP SD 08 BY DESIGNATING ASSESSOR'S BLOCK AND LOTS: 8719/ 006 AND 9900/048 AS PART OF THE MISSION ROCK SPECIAL USE DISTRICT; ADOPT FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1 AND FINDINGS UNDER PLANNING CODE SECTION 302, AND INCORPORATING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, on September 5, 2017, Mayor Edwin Lee and Supervisor Jane Kim introduced an ordinance (Board File 170940) for Planning Code Text Amendments to establish the Mission Rock Mixed-Use District and the Mission Rock Special Use District (herein "SUD"), and for Planning Code Map Amendments by amending Zoning Map ZN08 by designating Assessor's Block and Lot: 8719/006 as part of the Mission Rock Mixed-Use District and by amending Special Use District Map SD08 by designating assessor's block and lots: 8719/ 006 and 9900/048 to the Mission Rock SUD.

WHEREAS, pursuant to Planning Code Section 302(b), on September 5, 2017, the San Francisco Board of Supervisors initiated these Planning Code Text and Map Amendments.

WHEREAS, these Planning Code Text and Map Amendments would enable the Project. The Project includes new market-rate and affordable residential uses, commercial uses, retail, light industrial uses, parking, shoreline improvements, infrastructure development and street improvements, and public open space. Depending on the uses proposed, the Project would include approximately 1.1. to 1.6 million gross square feet (gsf) of residential uses (estimated as between 1,000 to 1,600 residential units) (of which 40% will be below market rate), approximately 972,000 to 1.4 million gsf of commercial-office uses, and a maximum of approximately 245,000 gsf of retail uses. The Project also includes construction of transportation and circulation improvements, new and upgraded utilities and infrastructure, geotechnical

and shoreline improvements, up to 3,000 off-street parking spaces in one or two new garages and 100 spaces elsewhere throughout the site. The Project is more comprehensively described in the Seawall Lot 337 and Pier 48 Mixed-Use Project Draft EIR.

WHEREAS, the Project would construct new buildings that would range in height from 90 to 240 feet, as is consistent with Proposition D which was passed by the voters of San Francisco in November 2015.

WHEREAS, these Planning Code Text Amendments would establish the Mission Rock Mixed Use District and Mission Rock SUD, which would outline the land use controls for the Project site.

WHEREAS, these Planning Code Map Amendments would designate the newly created Mission Rock Mixed-Use District and the Mission Rock Special Use District to the Project Site; the newly created SUD outline the land use controls for the Project site.

WHEREAS, this Resolution approving these Planning Code Text and Map Amendments is a companion to other legislative approvals relating to the Project, including approval of the Mission Rock Design Controls document, and recommendation for approval of the Development Agreement.

WHEREAS, as part of the implementation of the Project, the Office of Community Investment and Infrastructure (OCII) will consider removing certain property identified as Mission Bay Parcel P20 (a 0.3-acre, approximately 20-foot-wide strip of land adjacent to the south side of Seawall Lot 337, along the north side of Mission Rock Street) from the Mission Bay South Redevelopment Plan, and such removal would be part of the Project implementation as described in the Development Agreement. Parcel P20 is currently subject to the Mission Bay South Redevelopment Plan and is designated in that plan as a small open-space buffer. When it adopted AB 2797, the state legislature recognized the need to remove P20 from the Redevelopment Plan, on the basis that "the revitalization of Seawall Lot 337 . . . is of particular importance to the state." As such, AB 2797 calls for the amendment of the Redevelopment Plan to remove P20 without State-level review under Health & Safety Code Sections 34163(c)-(f) and 34164(a) and (b).

WHEREAS, on October 5, 2017, the Planning Commission reviewed and considered the Final EIR for the Mission Rock Project ("FEIR") and found the FEIR to be adequate, accurate and objective, thus reflecting the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft EIR, and certified the FEIR for the Project in compliance with the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 by Motion No. 20017.

WHEREAS, on October 5, the Commission by Motion No. 20018 approved CEQA Findings, including adoption of a Mitigation Monitoring and Reporting Program (MMRP), under Case No. 2013.0208ENV, for approval of the Project, which findings and MMRP are incorporated by reference as though fully set forth herein.

WHEREAS, on October 5, 2017, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the proposed Planning Code Text and Map Amendments and has considered the information included in the File for these Amendments, the staff reports and presentations, public testimony and written comments, as well as the information provided about the Project from other City departments.

WHEREAS, a draft ordinance, substantially in the form attached hereto as Exhibit A, approved as to form, including those minor changes to Exhibit A as provided by staff on September 28, 2017, would

establish the Mission Rock Mixed Use District, Mission Rock SUD, and make other related Planning Code Text and Map amendments.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission hereby finds that the Planning Code Text Amendments and Zoning Map Amendments promote the public welfare, convenience and necessity for the following reasons:

1. The Amendments would help implement the Mission Rock Mixed-Use Project development, thereby evolving currently under-utilized surface parking lot for needed housing, commercial space, and parks and open space.
2. The Amendments would help implement the Mission Rock Mixed-Use Project, which in turn will provide employment opportunities for local residents during construction and post-occupancy, as well as community facilities and parks for new and existing residents.
3. The Amendments would help implement the Mission Rock Mixed-Use Project by enabling the creation of a mixed-use and sustainable neighborhood, with fully rebuilt infrastructure. The new neighborhood would improve the site's multi-modal connectivity to and integration with the surrounding City fabric, and connect existing neighborhoods to the City's waterfront.
4. The Amendments would enable the construction of a new vibrant, safe, and connected neighborhood, including new parks and open spaces. The Amendments would help ensure a vibrant neighborhood with active streets and open spaces, high quality and well-designed buildings, and thoughtful relationships between buildings and the public realm, including the waterfront.
5. The Amendments would enable construction of new housing, including new on-site affordable housing, and new retail and manufacturing uses. These new uses would create a new mixed-use neighborhood that would strengthen and complement nearby neighborhoods.
6. The Amendments would facilitate the preservation and rehabilitation of Pier 48 - an important historic resource listed in the National Register of Historic Places.

AND BE IT FURTHER RESOLVED, that the Planning Commission finds the Planning Code Text and Map Amendments are in general conformity with the General Plan and Planning Code Section 101.1 as set forth below.

AND BE IT FURTHER RESOLVED, that the Planning Commission finds the Project and its approvals associated therein, including the amendment to the Mission Bay South Redevelopment Plan to remove Parcel P20 from that Plan, all as more particularly described in Exhibits B and C to the Development Agreement on file with the Planning Department in Case No. 2013.0208DVA, are on balance consistent with the Objectives and Policies of the General Plan, as described herein as follows:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

POLICY 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

POLICY 1.8

Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

POLICY 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The Project is a mixed-use development with approximately 1.1 to 1.6 million gsf of residential uses (estimated at between 1,100 and 1,600 dwelling units) at full project build-out, which will provide a wide range of housing options. As detailed in the Development Agreement, the Project substantially exceeds the inclusionary affordable housing requirements of the Planning Code, through a partnership between the developer and the City to reach a 40% affordable level.

OBJECTIVE 11

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

POLICY 11.1

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

POLICY 11.2

Ensure implementation of accepted design standards in project approvals.

POLICY 11.7

Respect San Francisco's historic fabric, by preserving landmark buildings and ensuring consistency with historic districts.

The Project, as described in the Development Agreement and controlled in the Design Controls (DC), includes a program of substantial community benefits and detailed plans designed to create a vibrant new mixed-use amenity-rich neighborhood at the location of an existing surface parking lot. The new neighborhood will feature small blocks and well-articulated buildings with a human scale modeled off of features characteristic of San Francisco neighborhoods. Through the standards and guidelines in the DC and through the Development Agreement (DA), the Project Sponsor has committed to the rehabilitation of Pier 48 pursuant to the Secretary of Interior Standards.

OBJECTIVE 12

BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.

POLICY 12.1

Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

POLICY 12.2

Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

The Project appropriately balances housing with new and improved infrastructure and related public benefits.

The project site is located proximate to both major regional and local public transit, including Muni Metro and Caltrain. The Project includes incentives for the use of transit, walking and bicycling through its TDM program. In addition, the Project's streetscape design would enhance vehicular, bicycle and pedestrian access and connectivity through the site. Therefore, new residential and commercial buildings constructed as part of the Project would rely on transit use and environmentally sustainable patterns of movement.

The Project will provide over eight acres of new open space for a variety of activities, including an expanded China Basin Park, a central town square-like space, a waterfront wharf, and other small plazas and pedestrian connections throughout.

The Project includes substantial contributions related to quality of life elements such as open space, affordable housing, transportation improvements, childcare, public art, workforce development, youth development, and historic preservation.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

POLICY 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The Project is intended to provide a distinct mixed-use development with residential, office, retail, cultural, and open space uses. The Project would leverage the Project site's location on the waterfront and close proximity to major regional and local public transit by building a dense mixed-use development that allows people to work and live close to transit. The Project would incorporate varying heights, massing and scale, maintaining a strong human-scaled streetwall along streets, and focused attention around public open spaces. The Project would create a balanced commercial center with a continuum of floorplate sizes for a range of users, substantial new on-site open space, and sufficient density to support and activate the new active ground floor uses and open space in the Project.

The Project would help meet the job creation goals established in the City's Economic Development Strategy by generating new employment opportunities and stimulating job creation across all sectors. The Project would also construct high-quality housing with sufficient density to contribute to 24-hour activity on the Project site, while offering a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents. The Project would facilitate a vibrant, interactive ground plane for Project and neighborhood residents, commercial users, and the public, with public spaces that could accommodate a variety of events and programs, and adjacent ground floor building spaces that include elements such as transparent building frontages and large, direct access points to maximize circulation between, and cross-activation of, interior and exterior spaces.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

POLICY 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

See above (Commerce and Industry Element Objective 1 and Policy 1.1) which explain the Project's contribution to the City's overall economic vitality.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

POLICY 3.2

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The Project would help meet the job creation goals established in the City's Economic Development Strategy by generating new employment opportunities and stimulating job creation across all sectors. The Project will provide expanded employment opportunities for City residents at all employment levels, both during and after construction. The Development Agreement, as part of the extensive community benefit programs, includes a Workforce Development Plan, including a local hire participation level of 30% per trade. Vertical developers will contribute \$1,000,000 to OEWD in 11 parcel-by-parcel installments. Half of the funds will support community-based organizations that provide barrier removal services and job readiness training for individuals within at-risk populations, and half will support city programs that provide job training for local residents.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.1 *Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.*

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society

POLICY 6.4

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

POLICY 6.5

Discourage the creation of major new commercial areas except in conjunction with new supportive residential development and transportation capacity.

POLICY 6.7

Promote high quality urban design on commercial streets.

The Project meets and furthers the Objectives and Policies of the Commerce and Industry Element by reinforcing the typical San Francisco pattern of including resident serving uses along with mixed-use development. The Amendments will generally permit small-scale retail and community-related uses throughout the site by requiring it at key locations along China Basin Park and along the pedestrian-oriented "Shared Public-Way." The Project calls for neighborhood commercial and other retail be established in a pedestrian-oriented active environment typical of San Francisco neighborhoods and specifically called for in the Commerce and Industry Element. The provision of retail space will provide entrepreneurial opportunities for local residents and workers. As noted above, streets will be designed to Better Streets standards with the particular goal of assuring an active and engaging environment for pedestrians.

TRANSPORTATION ELEMENT**OBJECTIVE 2**

USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

POLICY 2.1

Use rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

POLICY 2.5

Provide incentives for the use of transit, carpools, vanpools, walking and bicycling and reduce the need for new or expanded automobile and automobile parking facilities.

The Project is located along Third Street and the Muni T-Line, whose service will substantially expand in the near future with the opening of the Central Subway. The Project is also in close proximity to the San Francisco Caltrain station along with other major bus lines. The Project includes a detailed TDM program, including various performance measures, physical improvements and monitoring and enforcement measures designed to create incentives for

transit and other alternative to the single occupancy vehicle for both residential and commercial buildings. In addition, the Project's design, including its streetscape elements, is intended to promote and enhance walking and bicycling.

OBJECTIVE 23

IMPROVE THE CITY'S PEDESTRIAN CIRCULATION SYSTEM TO PROVIDE FOR EFFICIENT, PLEASANT, AND SAFE MOVEMENT.

POLICY 23.1

Provide sufficient pedestrian movement space with a minimum of pedestrian congestion in accordance with a pedestrian street classification system.

POLICY 23.2

Widen sidewalks where intensive commercial, recreational, or institutional activity is present, sidewalks are congested, where sidewalks are less than adequately wide to provide appropriate pedestrian amenities, or where residential densities are high.

POLICY 23.6

Ensure convenient and safe pedestrian crossings by minimizing the distance pedestrians must walk to cross a street.

The Project will establish a new tight-knit street network on the project site, and will provide pedestrian improvements and streetscape enhancement measures as described in the DC and reflected in the mitigation measures, the Transportation Plan, and in the Development Agreement. The Project would establish two new north-south rights-of-way and three new east-west rights-of-way through the site, increasing the sites connectivity and access. All streets will be constructed to Better Street standards; the transportation network will include robust bike facilities and will improve and complete a missing link in the Bay Trail and Blue Greenway.

URBAN DESIGN ELEMENT

OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

POLICY 1.1

Recognize and protect major views in the city, with particular attention to those of open space and water.

As explained in the DC, the Project is very carefully designed with particular emphasis on assuring a vibrant and engaging pedestrian realm. Buildings are to be scaled and shaped specific to their immediate context by assuring streetwalls are well proportioned relative to adjacent streets and open spaces. The Project's proposed tallest buildings will be sited at key locations to mark important gateway locations assuring that the buildings taken together create a dynamic skyline. The overall heights of the project are harmonious with and complementary to the overall city skyline when viewed from various distances.

POLICY 1.2

Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

POLICY 1.3

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

POLICY 1.5

Emphasize the special nature of each district through distinctive landscaping and other features.

POLICY 1.6

Make centers of activity more prominent through design of street features and by other means.

POLICY 1.7

Recognize the natural boundaries of districts, and promote connections between districts.

POLICY 2.9

Review proposals for the giving up of street areas in terms of all the public values that streets afford.

POLICY 2.10

Permit release of street areas, where such release is warranted, only in the least extensive and least permanent manner appropriate to each case.

The Project will create a new fine-knit street network on the project site where it does not currently exist, increasing public access and circulation through the site. Buildings will be constructed between a maximum height range of 90 and 240 feet, with buildings stepping down to bases of 40 to 65 feet along streets. Building heights and urban design requirements in the DC assure that Pier 48, the site's existing historic Pier, will be respected and retain its predominance along the bayfront. The Project is envisioned as an extension and improvement to the Mission Bay neighborhood

OBJECTIVE 2

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

POLICY 2.4

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

POLICY 2.5

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Pier 48 will be rehabilitated to Secretary of Interior's Standards.

OBJECTIVE 3

MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

POLICY 3.3

Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

POLICY 3.4

Promote building forms that will respect and improve the integrity of open spaces and other public areas.

POLICY 3.5

Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

POLICY 3.7

Recognize the special urban design problems posed in development of large properties.

POLICY 3.8

Discourage accumulation and development of large properties, unless such development is carefully designed with respect to its impact upon the surrounding area and upon the city.

While large in scope, the Project will be constructed in such a way to be an integral part of the San Francisco urban fabric. Blocks are being established at smaller-than-typical sizes to assure buildings are well-scaled, and that the site is permeable and accessible to all. Buildings will be shaped to assure that their fronting streetwalls are well proportioned relative to their adjacent streets and open spaces. The tallest of the site's buildings will be placed at key gateway and central locations and well-spaced to assure they work well together in adding to the City's skyline.

RECREATION AND OPEN SPACE ELEMENT

OBJECTIVE 1

ENSURE A WELL-MAINTAINED, HIGHLY UTILIZED, AND INTEGRATED OPEN SPACE SYSTEM.

POLICY 1.1

Encourage the dynamic and flexible use of existing open spaces and promote a variety of recreation and open space uses, where appropriate.

POLICY 1.7

Support public art as an essential component of open space design.

The Project would build a network of waterfront parks, playgrounds and recreational facilities on the 28-Acre Site that will greatly enhance access to and along the Bay. China Basin Park will be significantly expanded to provide a multi-use Bayfront park that provides both active and

contemplative space, while providing a space for planned community events. A central town square-like space will enable the proposed high-retail corridor to spill into open space creating an active and engaging central civic space. The Project will provide approximately eight acres of new and expanded open space for a variety of activities, including a great lawn, a small ballfield, kayak boat launches, wharf, along with small pedestrian plazas throughout. In addition, the Project would provide new private and/or common open space for the new dwelling units.

POLICY 1.12

Preserve historic and culturally significant landscapes, sites, structures, buildings and objects.

See Discussion in Urban Element Objective 2, Policy 2.4 and 2.5.

OBJECTIVE 3

IMPROVE ACCESS AND CONNECTIVITY TO OPEN SPACE.

POLICY 3.1

Creatively develop existing publicly-owned right-of-ways and streets into open space.

The Project provides approximately eight acres of new and expanded public open space and opens up new connections to the shoreline in the Mission Bay neighborhood. The Project would encourage non-automobile transportation to and from open spaces, and would ensure physical accessibility within these open spaces. The Project features robust bike facilities to both assure continuity of the Bay Trail and Blue Greenway, and improve bike access for its residents, workers, and visitors.

ENVIRONMENTAL PROTECTION ELEMENT

OBJECTIVE 1

ACHIEVE A PROPER BALANCE AMONG THE CONSERVATION, UTILIZATION, AND DEVELOPMENT OF SAN FRANCISCO'S NATURAL RESOURCES.

Policy 1.4

Assure that all new development meets strict environmental quality standards and recognizes human needs.

OBJECTIVE 15

INCREASE THE ENERGY EFFICIENCY OF TRANSPORTATION AND ENCOURAGE LAND USE PATTERNS AND METHODS OF TRANSPORTATION WHICH USE LESS ENERGY.

POLICY 15.3

Encourage an urban design pattern that will minimize travel requirements among working, shopping, recreation, school and childcare areas.

The Project is consistent with and implements the Environmental Protection Element in that it calls for mixed-use, high density, transit-friendly, sustainable development.

The Project's approvals include a Sustainability Plan, that among other things, set goals for the Project Sponsor that include sea level resilience through the year 2100, 100% operational energy from renewable sources, 100% non-potable water met with non-potable sources, and 20% single occupancy vehicle trip reduction.

PUBLIC SAFETY ELEMENT

OBJECTIVE 2 REDUCE STRUCTURAL AND NON-STRUCTURAL HAZARDS TO LIFE SAFETY, MINIMIZE PROPERTY DAMAGE AND RESULTING SOCIAL, CULTURAL AND ECONOMIC DISLOCATIONS RESULTING FROM FUTURE DISASTERS.

POLICY 2.1 *Assure that new construction meets current structural and life safety standards.*

POLICY 2.3 *Consider site soils conditions when reviewing projects in areas subject to liquefaction or slope instability.*

POLICY 2.9 *Consider information about geologic hazards whenever City decisions that will influence land use, building density, building configurations or infrastructure are made.*

POLICY 2.12 *Enforce state and local codes that regulate the use, storage and transportation of hazardous materials in order to prevent, contain and effectively respond to accidental releases.*

The Project is consistent with and implements the Community Safety Element. All improvements, including infrastructure, buildings and open space improvements will be constructed to local seismic standards, taking into account, among other considerations, the geological condition of the soil.

AIR QUALITY ELEMENT

OBJECTIVE 3 DECREASE THE AIR QUALITY IMPACTS OF DEVELOPMENT BY COORDINATION OF LAND USE AND TRANSPORTATION DECISIONS.

POLICY 3.1 *Take advantage of the high density development in San Francisco to improve the transit infrastructure and also encourage high density and compact development where an extensive transportation infrastructure exists.*

POLICY 3.2 *Encourage mixed land use development near transit lines and provide retail and other types of service oriented uses within walking distance to minimize automobile dependent development.*

POLICY 3.6 *Link land use decision making policies to the availability of transit and consider the impacts of these policies on the local and regional transportation system.*

POLICY 3.9 *Encourage and require planting of trees in conjunction with new development to enhance pedestrian environment and select species of trees that optimize achievement of air quality goals*

OBJECTIVE 6 LINK THE POSITIVE EFFECTS OF ENERGY CONSERVATION AND WASTE MANAGEMENT TO EMISSION REDUCTIONS.

POLICY 6.2 *Encourage recycling to reduce emissions from manufacturing of new materials in San Francisco and the region.*

The Project is consistent with and implements the Air Quality Element in that it calls for mixed-use, high density, sustainable development that will enable efficient use of land and encourage travel by transit, bicycle and by foot, thereby reducing auto use. The Sustainability Plan and TDM Plan governing development of the Project mandate a 20% single occupancy vehicle trip reduction.

AND BE IT FURTHER RESOLVED, that the Planning Commission finds the Project and its approvals associated therein, all as more particularly described in Exhibits B and C to the Development Agreement on file with the Planning Department in Case No. 2013.0208DVA, are in general conformity with the Planning Code Section 101.1 priority policies, as follows:

1. That existing neighborhood serving retail uses be preserved and enhanced and future opportunities for resident employment in or ownership of such businesses enhanced.

The Project will preserve and enhance existing neighborhood serving retail uses. The Project includes adding roughly 245,000 square feet of new retail uses, that will be focused along a central pedestrian "Shared Public Way" and fronting the site's major parks. The project does not include the removal of any existing neighborhood serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The Project accommodates new development on land currently a surface parking lot. It would not accommodate removing or changing the character of existing residential neighborhoods. The Project includes a robust affordable housing program setting aside 40-percent of the on-site housing for below-market-rate units. The Project lays out requirements to assure the new development has characteristics of mixed-use neighborhoods throughout San Francisco, including but not limited to a fine-grained system of streets, well-modulated buildings with active frontages, and the ability to establish diverse retail and community uses where nothing exists today.

3. That the City's supply of affordable housing be preserved and enhanced.

The Project calls for development that would have a positive effect on the City's affordable housing stock. The Project would accommodate up to 1.6 million gsf of new residential units (estimated at 1,600 new units), of which 40-percent will be designated as Below-Market Rate. There is no housing on the site today; the Project would not accommodate the removal of any existing dwelling units.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project anticipates substantial new transit service improvements along Third Street with the opening of the Central Subway in 2019, as well as substantial improvement to nearby Caltrain service through the ongoing electrification project. Streets have been designed to emphasize travel by bicycle or by foot. On-street parking is generally not proposed thereby allowing more street space to be designated for bicyclists, pedestrians, and those arriving by transit, or taxi/TNCs, as well as for deliveries. While a large centralized parking facility (up to 3,000 spaces in one or two centralized garages) is proposed, the total number of spaces site-wide would not represent a substantial net gain of spaces for the site overall from existing conditions. At present, approximately 2,900 parking spaces are on the site between Lot A and Pier 48. Only 100 parking spaces are allowed elsewhere on the site in addition to the centralized garages.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project would not adversely affect the industrial sector or service sectors. No such uses would be displaced by the Project. The Project includes the rehabilitation of Pier 48, which will provide about 250,000 gsf of new or improved space for production uses. Additional small production spaces would also be required along Terry Francois Boulevard, providing industrial space where none exists today.

6. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

All new construction would be subject to the City's Building Code, Fire Code and other applicable safety standards. Thus, the Project would improve preparedness against injury and loss of life in an earthquake by prompting development that would comply with applicable safety standards.

7. That landmarks and historic buildings be preserved.

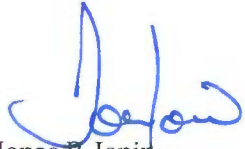
Pier 48 would be rehabilitated pursuant to the Secretary of Interior's Standards.

8. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project would not significantly adversely affect existing open spaces or their access to sunlight and vistas. The Project includes a robust parks and open space program including the substantial expansion of China Basin Park and the establishment of two new additional parks and

other pedestrian plazas throughout. The Project includes a fine-grained network of new streets thereby assuring the site permeability and access through it.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on Thursday, October 5, 2017.



Jonas P. Ionin

Commission Secretary

AYES: Hillis, Richards, Fong, Johnson, Koppel, Melgar, Moore

NAYS: None

ABSENT: None

ADOPTED: October 5, 2017



February 7, 2025

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Gail Gilman, Vice President
Hon. Willie Adams
Hon. Stephen Engblom
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Informational presentation to consider and possible action to: 1) authorize Port staff to accept public infrastructure and improvements including streets, sidewalks, parks, and open spaces constructed by Seawall 337, LLC ("Developer") and its affiliates at Seawall Lot 337, the "Mission Rock Project" bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay; 2) approve a lease and loan agreement and a management agreement with SWL 337, LLC and its affiliates; 3) approve multiple utilities licenses and agreements related to the operation and maintenance of Port-owned public spaces in the Mission Rock Project, subject to further approval by the Board of Supervisors; 4) approve a sponsorship agreement with an affiliate for the SF Giants Commemorative Paver program in China Basin Park; and 5) recommend that the Board of Supervisors (i) take certain actions to accept public infrastructure and improvements including streets, sidewalks, and other City infrastructure at the Mission Rock Project and (ii) approve execution of the various agreements authorized by this Resolution.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolutions Nos. 25-05 and 25-06

EXECUTIVE SUMMARY

The Mission Rock project (the “Project”) is a 28-acre site located at Seawall Lot 337 and bounded by China Basin Channel, Third Street, Mission Rock Street, and the San Francisco Bay. The Port’s development partner for the Project is Seawall Lot 337 Associates, LLC, a partnership between the San Francisco Giants and Tishman Speyer (collectively with its affiliates, the “Developer”). The Project is governed by its Disposition and Development Agreement (DDA), Master Lease, and related agreements between the Port and the Developer. Under the DDA, MRP is required to construct horizontal improvements, including parks, streets, and utilities, as well as four buildings consisting of two primarily multi-family residential buildings and two commercial office/life science buildings. The Developer commenced construction of Phase 1 (see Exhibit A, Site Map) in 2019 and has completed construction over the last several months.

The newly constructed Phase 1 streets, utilities, and public open spaces have opened to the public under the Master Lease. The Developer has also received approvals for two critical milestones in the acceptance process: a Schedule of Performance (“SOP”) conditional compliance determination from the Port, and issuance of a Notice of Completion (“NOC”) for Phase 1 Assets by the Department of Public Works. The SOP and NOC approvals document that the team has generally completed final commissioning and inspections. The Port and other receiving City agencies have deemed Phase 1 horizontal infrastructure ready for acceptance, subject to the completion of certain deferred improvements anticipated to be complete in Spring 2025.

The SOP and NOC approvals also mark the beginning of sequential Port and City legislative processes through which the Port Commission and Board of Supervisors (“BOS”) formally accept ownership of Phase 1 horizontal infrastructure constructed at Mission Rock. In passing the legislative package presented in this report, the Port Commission will authorize Port staff to formally assume ownership, liability, and maintenance responsibilities for Port-owned infrastructure (“Port Assets”). This includes infrastructure constructed in Port open spaces (“Port Open Space Assets”), and City right-of-way (“Port ROW Assets”). The City’s respective legislative process through which the BOS authorizes City staff to accept ownership of City-owned horizontal infrastructure (“City Assets”) constructed in the public right-of-way (“ROW”) will commence soon afterward and is anticipated to be completed in spring of 2025.

At the March 12, 2024, Port Commission meeting, Port staff gave an informational presentation outlining the Port’s and City’s respective acceptance processes and summarizing the various land use agreements the Port and City would need to approve through the Phase 1 acceptance process (see item 7A). The required Port Commission actions are summarized in the list below:

- Accept ownership of Port Open Spaces by removing areas from the Master Lease between Port and Developer;
- Accept ownership of Port ROW Assets and recommend the BOS accept City Assets by removing areas from the Master Lease between Port and Developer;

- Approve various land rights agreements required to facilitate operations and maintenance of new Port Assets at Mission Rock including:
 - A lease and loan agreement with an affiliate of the Developer, (expected to be Mission Rock Commons or “MRC”) to operate, program, and maintain China Basin Park,
 - A management agreement enabling MRC to maintain the Mission Rock Paseos, open spaces, and Port-owned improvements in the City ROW,
 - A license agreement granting Mission Rock Utilities, Inc. (“MRU,” a private utility operator serving the development) the right to operate and maintain their facilities within China Basin Park and Port open space,
 - License agreements granting PG&E the right to operate and maintain gas lines serving two buildings and an electrical line serving the 3rd Street Bridge Pilot House with an accompanying Absolving Services Agreement governing electrical service,
 - An Interagency Master Encroachment Permit (“IMEP”) issued by the Department of Public Works to the Port documenting the Port’s obligations for Port Assets in City ROW,
- Approve a sponsorship agreement between the SF Giants and MRC for the installation, maintenance, and removal of Commemorative Pavers in the pedestrian portion of the Bay Trail in China Basin Park; and
- Recommend that the BOS accept City infrastructure and approve the land rights agreements described above.

Staff now request the Port Commission's approval of these acceptance-related actions.

STRATEGIC OBJECTIVES

Acceptance of completed Phase 1 Horizontal infrastructure will meet the following Port Strategic Objectives by helping to advance the implementation of development within the Mission Rock Special Use District (“Mission Rock SUD”):

- **Productivity:** Attract and retain tenants to build an economically successful and vibrant waterfront.
- **Resilience:** Reduce seismic and climate change risks to protect the waterfront.
- **Sustainability:** Advance environmental stewardship to limit climate change and protect the Bay.
- **Evolution:** Evolve the waterfront to respond to changing public and Port needs.

PROJECT UPDATE, BACKGROUND, AND CONTEXT

Project Overview

The entitled Mission Rock project, upon completion of all phases, anticipates approximately 1,100 units of rental housing, 1.4 million square feet of new commercial and office space, the rehabilitation of historic Pier 48, as well as space for small-scale manufacturing, retail, neighborhood services, waterfront parks, and public infrastructure.

The mixed-use Project is located on approximately 28 acres, including SWL 337 and Pier 48.

Approved in 2018, the Project reflects fourteen years of effort, led by the Port Commission, Port and City staff, and Mission Rock Partners, a partnership between the San Francisco Giants and Tishman Speyer.

Phase 1 currently includes the following program elements:

- 537 Apartment units, including 161 affordable units
- 550,000 gross square feet office
- 52,000 gross square feet of retail
- District Energy System (heating and cooling) located in Parcel A which will serve all of Mission Rock
- District-scale non-potable water recycling plant located in Parcel B, which will serve all of Mission Rock's indoor and outdoor non-potable water needs

Key public benefits include affordable housing, parks and open space, implementation of sustainability strategy goals, and achievement of workforce and local hire requirements and goals agreed upon in the Project's DDA and Development Agreement (DA).

LOCAL BUSINESS ENTERPRISE (LBE) UPDATE

During the final months of the construction phase, Mission Rock Partners realized a minor decrease in overall LBE participation for the 2Q24 reporting period. In addition to decreased construction activity, as the project team processes closeouts for Parcel F and the Horizontal scope of the project, the anticipated LBE participation is slightly less, noting a difference of -\$431,938 from 1Q24. Currently, LBE contracts amount to a cumulative total of \$170,328,839 in LBE awards, or 18.22% LBE Participation, while increasing contract dollars awarded to women-owned local businesses.

The equity efforts through 2Q 2024 have resulted in a cumulative \$113,459,492 LBE value awarded to minority-owned and woman-owned companies, equal to approximately 66.7% of LBE contract values awarded.

CUMULATIVE: ALL AWARDS (THRU 1Q 2024)	BY QUARTER: ALL AWARDS* (2Q 2024)	CUMULATIVE: ALL AWARDS* (THRU Q2 2024)
<ul style="list-style-type: none"> ● LBE VALUE: \$170,760,777 ● NON-LBE AWARDS: \$752,895,464 ● OVERALL: \$923,656,241 ● LBE PARTICIPATION: 18.49% 	<ul style="list-style-type: none"> ● LBE VALUE: -\$431,938 ● NON-LBE AWARDS: \$11,382,011 ● OVERALL: \$10,950,794* ● LBE PARTICIPATION: -.27% 	<ul style="list-style-type: none"> ● LBE VALUE: \$170,328,839 ● NON-LBE AWARDS: \$764,278,196 ● OVERALL: \$934,607,035* ● LBE PARTICIPATION: 18.22%
<p style="text-align: center;">Overall Vendor Count:</p> <ul style="list-style-type: none"> o 467 Vendors Overall (+30 added); including 105 LBE Vendors (+2 added) o 66 woman-owned businesses contracted (+0 added); maintaining 34 woman-owned LBE's (+0 added) o 84 minority-owned business contracted (+0 added); maintaining 61 minority-owned LBE's (+0 added) 		

**Note that the dollars reported above are dollars under contract as of June 30, 2024. The Developer has also voluntarily reported to the Port that its contracts with the general contractors (GCs) at Mission Rock include "LBE Pipeline" values which are subcontracted values in prime subcontracts that are contractually committed to LBE businesses. The Developer reports that an additional \$179,162 of these LBE Pipeline values are in place, through the end of Phase 1. This combined LBE Value of LBE Awarded + LBE Pipeline increases LBE Participation to 18.25%.*

Of note, the LBE participation percentages are subject to fluctuation from quarter to quarter given several factors, including the timing of awards and separate parcel schedules. Mission Rock Partners continues to work closely with the Port of San Francisco, the San Francisco Contract Monitoring Division (CMD), and General Contractors to ensure LBE and project equity goals are met. Several barrier mitigation strategies have been implemented throughout this phase to support better businesses and increase opportunities for business owners from historically underrepresented communities.

Mission Rock Development Contract Awards Through June 30, 2024

Amount Awarded	\$934,810,888	Percentage
Awarded to Small & Micro LBE	\$158,643,966	16.97%
Awarded to SBA LBE (incl. Graduated)	\$11,684,872	1.25%
Awarded to Non-LBE	\$764,482,050	81.78%

LBE Award by Size	\$170,328,838	Percentage
Awarded to Micro LBE	\$77,938,546	8.34%
Awarded to Small LBE	\$80,705,420	8.63%
Awarded to SBA-LBE (incl. Graduated)	\$11,684,872	1.25%

LBE Award by Type	\$170,124,984	Percentage
Awarded to MBE-LBE	\$73,117,597	7.82%
Awarded to WBE-LBE	\$40,341,895	4.32%
Awarded to OBE-LBE	\$56,665,492	6.06%

Mission Rock Development Contract Awards to Minority-Owned Companies Through June 30, 2024

Minority-Owned: LBE's	Amount Awarded	% of MBE	% of LBE	% of All
African-American	\$37,820,056	44.44%	23.84%	4.05%
Arab-American	\$151,807	0.18%	0.10%	0.02%
Asian-American	\$15,528,976	18.25%	9.79%	1.66%
Latino-American	\$31,600,341	37.13%	19.92%	3.38%
Native American/ Indigenous People	\$--	0.00%	0.00%	0.00%

Minority-Owned: All	Amount Awarded	% of All
African-American	\$39,233,958	4.20%
Arab-American	\$2,004,906	0.21%
Asian-American	\$22,700,381	2.43%
Latino-American	\$35,565,120	3.80%
Native American/ Indigenous People	\$3,600,756	0.39%

PHASE 1 VERTICAL IMPROVEMENTS

Phase 1 vertical construction includes four buildings: two primarily residential (totaling 537 rental units) and two commercial office/life science. All four buildings have received either a Certificate of Final Completion and Occupancy (CFCO) or a Temporary Certificate of Occupancy (TCO). With apartment leasing having commenced in June 2023, the two residential buildings, Canyon and Verde, have leased a significant number of market rate and below-market rate units, activating the Project site with new residents as a complement to the tenants now occupying the office spaces.

With regard to retail activation, the Project team has had success leasing ground floor storefronts to a variety of businesses, including Ike's Sandwiches, Proper Foods, Ariscault Bakery, Flour + Water Pizza, a full-service restaurant from the staff behind Che Fico, and LuxeFit gym. These businesses offer on-site residents, office tenants and the surrounding community the types of services that together are creating a vibrant new waterfront neighborhood at Mission Rock.

PHASE 1 HORIZONTAL IMPROVEMENTS READY FOR ACCEPTANCE

Horizontal improvements proposed for acceptance by the Port or City, and approval to remain in Port- or City-accepted space, fall within five broad categories: 1) Port Park and Open Space Assets, 2) private assets owned by the Developer and 3rd party utility operators in Port open space, 3) City-standard assets within City ROW; 4) non-standard Port-owned assets within City ROW; 5) private assets owned by third-party utility operators within City ROW. Table 1 below summarizes key information for each of the five categories of acceptance assets.

Table 1. Horizontal Improvements for Acceptance

	Improvements Included	Entity that Owns, Maintains, & Holds Liability	Master Permitting Agency
Category 1 Port Open Space Assets	Most assets within China Basin Park, Channel Street, Mission Rock Square, and the Dr. Maya Angelou and Bridgeview Paseos	Port	Port
Category 2 Private Assets in Port Open Space	Private Assets in Port open space (e.g. third-party utilities such as Mission Rock Utilities (“MRU”) and PG&E facilities, electric line serving retractable bollards in Paseos)	MRU, PG&E, Mission Rock Owners’ Association	Port
Category 3 City Assets (<i>Standard items in City ROW</i>)	Standard streetscape components of all other blocks constructed within the Phase	Public Works: Standard Paving, curbs, road base, etc. SFMTA: Traffic Signals, signage, striping, etc. SFPUC: Streetlights, electrical infrastructure, wet utilities, etc.	Public Works
Category 4 Port ROW Assets (<i>non-standard items in City ROW</i>)	Non-standard items within Public Works ROW (e.g. custom paving, trash cans, bike racks, and benches; understory plantings; Public Art, etc.)	Port	Public Works
Category 5 Private Assets in Public Works ROW	Utility systems owned by third parties such as Mission Rock Utilities, PG&E and Comcast	Third-Party Utility Operator	Public Works

This framework is memorialized in the Jurisdictional Memorandum of Understanding between the Port and other city departments that was approved by the Port Commission May 26, 2020 via Resolution No. 26-20 (Jurisdictional MOU). The Port’s obligations relative to Port Acceptance Items located in City ROW are also memorialized in the IMEP between the Port and Public Works to be approved by the Port Commission and BOS.

Port Open Space Assets

With the exception of limited third-party utility systems, the Port will own all improvements constructed within Port open space. The Port will contract with MRC to perform the maintenance and operation of this space through a lease and loan agreement for China Basin Park and a management agreement for other areas (each described more fully in the Maintenance section of this memorandum). For a detailed list of Port Open Space Assets, see Exhibit B.

Private Assets in Port Open Space

Third party utilities in Port open spaces include various utility systems owned by Mission Rock Utilities, PG&E gas lines in Mission Rock Square and the Bridgeview Paseo, a PG&E electric line in China Basin Park serving the Third Street Bridge Pilot House, and private electrical cable linking retractable bollards in the Bridgeview and Dr. Maya Angelou Paseos to Mission Rock's security and operations center in Building B (the Port owns the conduit housing this electrical cable). Access rights for private utilities in Port open space are granted via license agreements between the Port and third-party utility operators.

City Assets

While the Port will continue to own fee title to the land underneath the newly constructed Phase 1 streets and sidewalks after acceptance due to its public trust obligations, standard infrastructure constructed within ROWs such as street curbs and gutters, asphalt roadways, traffic signals, traffic signage, and utility systems (collectively, the "City Assets"), will be owned and maintained by the customary City agencies (Public Works, DT, SFFD, SFMTA, SFPUC). Accordingly, Public Works served as the lead permitting agency for streets and sidewalks constructed at Mission Rock and will continue in this role pursuant to the Jurisdictional MOU after the streets are accepted. The Phase 1 Public Works ROWs are shown in Exhibit A.

Port ROW Assets (non-standard Port Items in City-accepted Port ROW)

As established in the project's maintenance matrix (an exhibit to the Mission Rock Interjurisdictional MOU), the Port accepts most non-standard items ("Port Acceptance Items"). As such, the Port will own, maintain, and have liability for these items. This arrangement will be memorialized in the IMEP between Public Works and the Port. For a comprehensive list of Port ROW Assets, see Exhibit C.

Private assets in City ROW

MRU owns several utility systems within the City-accepted ROWs. As MRU does not have a utility franchise operating license with the State, Public Works will issue MRU a General Master Encroachment Permit (GMEP) allowing them to operate within City rights-of-way. The Port is not a party to this agreement. Other utilities will operate within City-accepted ROWs in accordance with pre-existing agreements, such as franchise rights.

MAINTENANCE OF PORT ACCEPTANCE ITEMS

The Port Commission approved Resolution 19-39 on September 24, 2019, which recommended a third-party management approach to facilitate the day-to-day operation of

the Mission Rock parks and open spaces. Implementation of this approach involves entering into a series of agreements, including a lease and loan agreement, management agreement, and several licenses. Collectively, these agreements limit the Port's liability and operational burden while ensuring that the spaces are well-maintained and remain open to the public. The Port will retain ownership of the assets and assert indirect control of the parks and open space areas through Developer affiliates that are well-positioned to provide focused, on-site management and immediate neighborhood engagement.

Port staff have negotiated the following agreements in conjunction with the acceptance process:

1. China Basin Park Lease and Loan Agreement ("Park Lease")
2. Paseo and Open Space Management Agreement ("Management Agreement")
3. Licenses for gas lines to Parcels F and G and an electric line in China Basin Park with PG&E
4. License with MRU for utility infrastructure in Port-owned spaces

The Port is also finalizing negotiations for a license for electric lines to retractable bollards within the acceptance areas, and a license for ground settlement monitoring equipment sited within Port open space and will return to the Port Commission at a future date to request approval of these land agreement(s).

China Basin Park Lease Loan Agreement

The China Basin Park Lease and Loan Agreement ("Park Lease") directly leases China Basin Park to MRC for operations and programming. The lease structure allows MRC flexibility in programming and the ability to use sponsorships of the park to generate revenues for operations, which is why China Basin Park is under a separate agreement.

The initial term of the Park Lease is 15 years with three five-year extension options for a total potential term of 30 years. The Port receives no rent for China Basin Park, but MRC will fund the maintenance, operations, and programming of the Park through various revenue sources. As tenant, MRC is also responsible for the Port's obligations under the Water Purchase Agreement with Mission Rock Utilities, whereby the Port purchases recycled water for irrigation in China Basin Park and other uses within Port-owned spaces. The Port will approve an operating budget and capital budget on an annual basis. The operating budget for the first year of the Park is shown in Exhibit E. As the Park is newly constructed, there is no capital budget for the first year. As part of the Lease, MRC must have an independent consultant conduct a capital needs assessment for the Park to inform future capital needs and budgets.

The most significant revenue source for the Park is payments from the Mission Rock Owners' Association paid in lieu of the Mission Rock Contingent Services Special Tax. The Owners' Association must pay an amount equal to the portion of the maximum Services Special Tax that would go to the Park if it was fully levied. If MRC collects less than this equivalent amount, the Port may direct the Community Facilities District ("CFD") Administrator to collect the difference to pay for Park operations and maintenance. The

Contingent Services Special Tax will also serve as a source of funds if the Park Lease terminates at any time, and the Port must operate and maintain the Park.

To fund early start-up operations of the Park, the Port proposes to provide a loan of up to \$800,000 facilitated by the San Francisco Recreation and Parks Department (“RPD”) to support operations as China Basin Park starts up and the Tenant seeks sponsorships for the Park. This loan will provide up to \$300,000 per year for each of the first three years of operations (up to a maximum of \$800,000) for core maintenance and operations costs of the Park (e.g., landscaping, cleaning, hardscape maintenance, bathrooms). The Tenant will repay the loan at 0 percent interest with all excess revenues after the Tenant has filled a \$100,000 emergency reserve. The Tenant must repay the loan in full prior to the end of the 15-year term of the Lease.

Paseo and Open Space Management Agreement

The Paseos and Open Space Management Agreement (Management Agreement) covers all other Port-owned assets and open spaces in the Mission Rock area, including the paseos, berms, and non-standard improvements in the City ROW.

The initial term of the Management Agreement is 15 years with three five-year options for the Port to extend the term for a total potential term of 30 years. As manager, MRC receives a set fee of \$10,000 annually (subject to CPI increases) and reimbursements for operations and maintenance costs from various sources. In total these costs will equal 25% of the maximum Contingent Services Special Tax Amount. The operating budget for the first year of the Management Agreement is shown in Exhibit E. The Mission Rock Owners’ Association revenues provide the primary source for these expenses, and similar to the Park Lease, the Port could levy the Contingent Services Special Tax to pay MRC if the Owner’s Association failed to provide adequate funds.

The Management Agreement is a Qualified Management Agreement under IRS rules, which is a requirement for the agreement because tax-exempt bonds funded these improvements as public infrastructure. Port staff will work with the City Attorney and bond counsel throughout the term of the Management Agreement to ensure it complies with all Qualified Management Agreement rules. This oversight includes monitoring and approving retail/restaurant use of sidewalks and open space to ensure they do not exceed private use rules under the tax-exempt bonds.

PG&E and MRU Licenses

PG&E and MRU operate private utilities within accepted Port-owned spaces. The Port has negotiated licenses to cover each of these utilities that allows the relevant party to operate within Port space and maintain their infrastructure.

PG&E operates gas lines to Building G (Visa) and Building F (Verde) and an electric line to the Third Street Bridge Pilot House that runs through China Basin Park. The Port and PG&E have negotiated two license agreements (one for both gas lines and one for the

electrical line) that allow PG&E to operate and maintain these lines while limiting liability to the Port. The license is a no-fee agreement with a 66-year term. As a condition to the electric line license, PG&E requires that the Port and City sign an Absolving Services Agreement that acknowledges PG&E may discontinue electric service if the license is revoked or terminated, and the City and Port affirmatively indemnify PG&E from claims or liability “connected with such discontinuance of service.” The Port and Public Works would agree to the agreement subject to approval by the City’s Risk Manager in accordance with S.F. Administrative Code section 1.24.

MRU operates a non-potable recycled water system and district energy system for all of Mission Rock, including China Basin Park and Port-owned public spaces. The Port and MRU have negotiated a license agreement that allows MRU to operate and maintain these lines while limiting liability to the Port. The license is a no-fee agreement with a 66-year term.

Table 2 below summarizes key terms for the key lease, management agreement, and licenses.

Table 2. Summary of Agreements and Key Terms

AGREEMENT	KEY TERMS
China Basin Park Lease and Loan Agreement (“Park Lease”)	<ul style="list-style-type: none"> • Parties: Port and Mission Rock Commons • Term: 15 years with three (3) five-year extension options that MRC may exercise • Requires BOS approval • Transfers maintenance and liability obligations for China Basin Park from Port to Park Tenant • Permits sponsorships and event programming to generate sufficient revenues to support first-class operation of the public park • Park Tenant assumes obligations of the Recycled Water Services Agreement • Sets forth Port approval process for annual budgets and reporting requirements • Sets forth maintenance and operational standards and requirements • Provides start up loan of \$300,000 annually during the first three years of operations up to a maximum of \$800,000
Paseos and Open Space Management Agreement (Management Agreement)	<ul style="list-style-type: none"> • Parties: Port and Mission Rock Commons • Term: 15 years with three (3) five-year extension options that Port may exercise • Requires BOS approval

	<ul style="list-style-type: none"> • Qualified management agreement designating Manager to operate and maintain open space and Port Assets (excluding China Basin Park) • Transfers liability obligations for paseos and open space from Port to Developer affiliate to the extent allowed for a qualified management agreement • Sets forth maintenance and operational standards and reporting requirements
PG&E Licenses and Absolving Services Agreements	<ul style="list-style-type: none"> • Parties: Port and PG&E • Term: 66 years • Requires BOS approval • Permits PG&E access rights for repair and maintenance of utility lines that run through Port-owned land, which serve Parcel F and Parcel G (two gas lines) and the 3rd Street Pilot House (electrical line) • Acknowledges electric service to Pilot House is contingent upon electric line license • Port and City would indemnify PG&E against claims and liability “connected with such discontinuance of service”
MRU License Agreement	<ul style="list-style-type: none"> • Parties: Port and MRU • Term: 66 years • Requires BOS approval • Permits MRU access rights for repair and maintenance of private infrastructure (Sanitary sewer, recycled water and district energy lines) which run throughout the Project and service the open space and building parcels

Per the DDA, the Developer is responsible for maintenance of Port Acceptance Items until they are accepted by the Port Commission. These maintenance activities are currently happening under the Developer’s Master Lease. Without the above agreements, the Port would have to maintain the horizontal improvements upon acceptance with funding from the Mission Rock Community Facilities District (“CFD”) Contingent Services Special Tax. However, the Developer and its affiliates will privately maintain and operate Port Assets with funding from the Mission Rock Owners Association dues (similar to homeowner association dues). Under this arrangement, the Contingent Services Special Tax levy is \$0. If the Developer affiliate fails to operate and maintain public spaces or collects insufficient dues from the Mission Rock Owners Association, then the Port has the ability to collect Contingent Special Services Taxes and/or maintain the spaces directly. However, if the Port collects Contingent Special Services Taxes in excess of the Mission Rock Owners Association dues while the Park Lease or Management Agreement are in effect, MRC has the ability to terminate those agreements.

SF GIANTS COMMEMORATIVE PAVERS CAPITAL IMPROVEMENT SPONSORSHIP

To align with the 25th anniversary of the opening of Oracle Park, the Giants have agreed to a Capital Improvement Sponsorship with MRC to construct a Commemorative Paver walkway in the pedestrian portion of the Bay Trail in China Basin Park. The Giants would fund the construction of the capital improvement and dedicate any excess revenues to China Basin Park for the maintenance and operations of the Park.

Exhibit D shows the area of the Bay Trail contemplated for the Commemorative Paver improvements and a conceptual design for the pavers themselves. Pending approval of the sponsorship, the Giants plan to commence construction in late February and target late March/early April for completion. These improvements would be completed under the Master Lease as deferred infrastructure and then maintained under the Park Lease. The Port is also negotiating a “springing” license with the SF Giants for maintenance and liability of the Commemorative Pavers that would go into effect if the Park Lease terminated. Staff will return at a future Port Commission date to request approval of this license.

PHASE 1 ACCEPTANCE PROCESS

MRP commenced construction in October of 2019 upon issuance of a Street Improvement Permit (SIP) by San Francisco Public Works. Construction of China Basin Park commenced in April of 2021 after the Port issued the China Basin Park permit.

Upon completion, public open spaces, streets, sidewalks, and associated utility systems, are all candidates for acceptance by the Port Commission and BOS. Before the Port Commission can accept Port-owned improvements, the Mission Rock DDA requires the Chief Harbor Engineer to make a determination that work has been completed as designed within the timeframes specified in the Schedule of Performance (“SOP”) attached to the DDA. Within 45 days after the Chief Harbor Engineer’s determination of compliance (the “SOP Compliance Determination”), the Port must calendar a Commission hearing to consider acceptance of horizontal improvements that will transfer to Port ownership.

China Basin Park was deemed substantially completed on April 4, 2024, when the Port issued a Temporary Certificate of Occupancy for the park’s restroom building. Mission Rock Partners’ request for SOP Compliance Determination was submitted by the Developer on November 29, 2024 conditionally approved by the Acting Chief Harbor Engineer Uday Prasad on January 29, 2025. Phase 1 horizontal improvements constructed through the SIP were found to be substantially complete on November 21, 2024 with the issuance of a Notice of Completion by the Department of Public Works. Port and City Assets were constructed via the SIP permit and are now ready to be accepted by the Port and City.

The SOP conditional Compliance Determination establishes the Developer has completed certain Phase 1 horizontal improvements and that these improvements are ready for acceptance by the Port Commission. Acceptance of Port Assets will be conditioned on completion of deferred infrastructure and future actions by the BOS. Acceptance will not

take effect until after the subsequent completion of the BOS legislative process. The BOS legislative process is expected to start in February 2025 and take effect in spring of 2025.

Acceptance of the improvements is governed by three documents previously approved by the Port Commission. These include (1) the project's Interagency Cooperation Agreement, which outlines the acceptance process for City-owned infrastructure in the public ROW approved by the Port Commission on January 26, 2018 via Resolution No. 18-07; (2) the DDA which outlines the City and Port's respective acceptance process also approved by the Commission on January 26, 2018 by Resolution No. 18-03 ; and (3) the Interjurisdictional MOU, which details obligations regarding permitting, ownership, and maintenance of public infrastructure constructed at Mission Rock for the Port and other City agencies (SFMTA, Public Works, SFPUC, DT) approved by the Commission on May 26, 2020 by Resolution No. 20-30.

The acceptance process, which takes several months to complete, broadly includes the following steps:

1. **City Notice of Completion (“NOC”) Process.** The NOC process is a multi-step process led by the City that takes several months to complete. When the Developer believes it has substantially completed construction of improvements under a Street Improvement Permit, the Developer submits documentation to the City that all permits have been closed out, infrastructure has been certified, and relevant warranties have been assigned. Upon concurrence by the City, Public Works issues a NOC. For the Mission Rock Phase 1 improvements, Public Works issued an NOC to Mission Rock Partners for the Phase 1 improvements on November 21, 2024.
2. **Port SOP Compliance Process.** The SOP Compliance Determination process is similar to the City's NOC process, except it is a determination that the Developer has completed the infrastructure within the timeframes specified in the DDA and in accordance with applicable project and regulatory requirements. The Developer submitted an SOP Compliance Determination request to the Port on May 29, 2024. The request (outlined in DDA Exhibit B9) included documentation that all Port permits have been closed out, warranties have been assigned and required access rights have been granted. The SOP submittal also included statements by key project stakeholders such as the Engineer and Landscape Architect of Record and third-party utility operators that work has been installed as designed and permitted. The Port conditionally approved the Developer's SOP Compliance Determination on January 29, 2025.
3. **Operations and Management Documents Finalized.** Documents memorializing operations, management ownership, and liability of City-owned and Port-owned infrastructure are finalized by the Port, City, and Developer. Primary documents included in this grouping are the Interjurisdictional MOU and the IMEP.

4. **Port Commission Resolution Accepting Port Acceptance Items.** Soon after the SOP Compliance Determination is approved, staff must calendar a Port Commission hearing to consider acceptance of the Port Acceptance Items.
5. **Board of Supervisors Legislation Accepting City-Owned Infrastructure.** The Board of Supervisors holds a series of hearings approving legislation to accept City-owned infrastructure. Port staff anticipates BOS approval will take effect in Spring 2025.

ANTICIPATED PORT COMMISSION ACTIONS

The Port Commission must consider taking several actions related to the Phase 1 Port Acceptance Items to facilitate the City's acceptance process and approve various agreements related to the leasing, management, and access to Mission Rock Port-owned spaces. Some actions solely apply to Port open space, whereas other actions will apply to City streets and sidewalks constructed in Phase 1 (the Port Commission needs to take actions related to Public Works ROWs because fee ownership of the underlying land remains with the Port). The Commission must also take actions related to the MMEP and the DDA Amendment, Park Lease, Management Agreement, and various other licenses. Table 3 below outlines these actions:

Table 3. Summary of Port Commission Actions

#	Port Commission Actions	Port Items	City Items
1	The Commission finds the Port Assets are functional and constructed in conformity with project and regulatory requirements.	X	
2	The Commission accepts Offers of Improvement from the Master Developer.	X	X
3	The Commission accepts the Port Assets and City Assets for public use.	X	X
4	The Commission dedicates the Port ROW Assets and City Assets Items for street and sidewalk purposes.	X	X
5	The Commission accepts the Port Assets Items for maintenance and liability purposes.	X	
6	The Commission approves the China Basin Park Lease and Loan Agreement, Paseo and Open Space Management Agreement, PG&E Gas License, PG&E Electric License and Absolving Services Agreement, and MRU License to allow for management, maintenance, and operations of Port spaces and assets and private infrastructure in Port property.	X	
7	The Commission recommends the Board of Supervisors accept the City Assets.		X
8	The Commission recommends the Board of Supervisors approve the Park Lease and other land use agreements.	X	

9	The Commission approves the IMEP, authorizes the Executive Director to execute the IMEP, and recommends the Board of Supervisors approve the IMEP.	X	X
10	The Commission accepts the Port Assets Items for maintenance and liability purposes, subject to the BOS approval of the Park Lease and other land use agreements, and delegates to the Executive Director or her designee to accept any deferred infrastructure at a later date.	X	
11	The Commission authorizes and directs the Executive Director or her designee to execute and record a Partial Release of Master Lease to transfer ownership of accepted Port Accepted or Deferred Infrastructure.	X	

NEXT STEPS

Subject to the Port Commission's approval of the attached resolutions, legislation for acceptance of City assets will be introduced at the BOS imminently and is anticipated to be completed in spring 2025. Upon BOS approval, and satisfaction of any conditions to acceptance, the Port and City Acceptance Items will transfer to Port and City, the land rights agreements described above will be executed between the Port and the respective parties, and the streets, open space, and China Basin Park will continue to be available for public use.

Prepared by: Paul Chasan
Project Manager, Engineering

Carrie Morris
Mission Rock Project Manager

Wyatt Donnelly-Landolt
Waterfront Development Manager

For: Scott Landsittel
Deputy Director, Real Estate and Development

Wendy Proctor
Acting Deputy Director, Engineering

Exhibits: A - Site Map
B - Port Open Space Assets
C - Port ROW Assets
D - Bay Trail Commemorative Paver Design Concept and Proposed Location
E - China Basin Park and Paseo and Open Space First Year Operating Budget

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 25-05

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, In January 2018, by Resolution No. 18-03, the Port Commission approved the terms of a Disposition and Development Agreement (“DDA”), between the Port and the Seawall Lot 337 Associates, LLC, a Delaware limited liability company (“Developer”), and related transaction documents that are incorporated into the DDA, for the development of approximately 28-acres located along the Port’s Central Waterfront and commonly referred to as “Mission Rock” (the “Project”), comprised of (1) Seawall Lot 337, bounded by Third Street on the west, Mission Rock Street on the south, Pier 48 to the east, and China Basin Park on the north; (2) Pier 48; (3) China Basin Park; (4) the marginal wharf between Pier 48 and Pier 50; and (5) Parcel P20 (collectively, the “Site”); and

WHEREAS, In February 2018, the Board of Supervisors approved the DDA by Resolution No. 42-18, and approved the Development Agreement for the Project by Resolution No. 33-18; and

WHEREAS, In a letter dated February 6, 2025, the Planning Department found that the actions contemplated in this resolution are within the scope of the Project’s final environmental impact report prepared under the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) and are, on balance, in conformance with the General Plan and the eight priority policies of Planning Code Section 101.1. A copy of the Planning Department letter is on file with the Commission Secretary and is incorporated herein by reference; and

WHEREAS, Under the Disposition and Development Agreement (“DDA”) and other transaction documents that the Port and Developer have negotiated, at full build-out, the Project will include: (1) 1.1 million to 1.6 million gross square feet (“gsf”) of new residential uses (an estimated 1,000 to 1,950 new residential units), at least 40% of which will be on-site housing affordable to a range of low- to moderate-income households as described in the Housing Plan in the DDA; (2) 972,000 to 1.4 million gsf of new commercial and office space; (3) 241,000 to 244,800 gsf of active retail and production uses on 11 proposed development blocks on Seawall Lot 337 in buildings that would range in height from 90 to 240 feet, consistent with Proposition D, passed by the voters of San Francisco in November 2015, which increased building

height limits on the Site up to 240 feet; (4) the rehabilitation and reuse of Pier 48, a significant contributing resource to the Port of San Francisco Embarcadero Historic District; (5) up to approximately 1.1 million gsf of above- and below-grade parking in one or two garages; (6) transportation demand management on-site and payment of impact fees that the Municipal Transportation Agency will use to improve transportation service in the area; (7) approximately 5.4 acres of net new open space for a total of approximately 8 acres of new and expanded open space, including an expansion of China Basin Park, a new central Mission Rock Square, and waterfront access along the shoreline; (8) public access areas, assembly areas, and an internal grid of public streets, shared streets, and utilities infrastructure; and (9) on-site strategies to protect against sea level rise; and

WHEREAS, Under the DDA, the Developer is required to construct public Horizontal Improvements (as defined in the DDA) serving the Project, including parks, streets, and utilities, which the Port or City, as applicable, will accept for ownership, maintenance and liability purposes; and

WHEREAS, The Port, Public Works, and Developer's affiliate, Mission Rock Horizontal Sub (Phase 1) L.L.C., a Delaware limited liability company, entered into a Public Improvement Agreement dated as of June 12, 2020 (the "PIA") governing the construction of the Horizontal Improvements as part of the final subdivision map process for Phase 1 of the Project; and

WHEREAS, The Developer substantially commenced construction of a portion of the Horizontal Improvements serving Phase 1 of the Project on October 10, 2020, upon issuance of a street improvement permit (the "Street Improvement Permit") by the City. The horizontal scope of work under the Street Improvement Permit included installation of utilities, including auxiliary water supply mains, low-pressure water mains, combined sewer mains, combined sewer storage, non-potable water mains, electricity and gas infrastructure, private utility systems, surface improvements along 3rd Street, Bridgeview Way, Dr. Maya Angelou Way, Toni Stone Crossing, surface improvements within Port open spaces (Bridgeview Paseo, Dr. Maya Angelou Paseo, a portion of the future Mission Rock Square), and subsurface portions of the China Basin Park Promenade; and

WHEREAS, The Developer substantially commenced construction of Horizontal Improvements serving Phase 1 within China Basin Park of the Project in April 2021 upon issuance of permit Number B-2021-0061 (the "China Basin Park Permit") by the Port. The horizontal scope of work under the China Basin Park Permit included installation of utilities, low-pressure water lines, non-potable water lines, electricity 12kV electrical lines, and surface improvements; and

WHEREAS, On April 4, 2024, the Port issued a Notice of Completion to the Developer signaling that construction of China Basin Park approved under Port Permit Number B-2021-0125 was substantially complete; and

WHEREAS, On May 3, 2024, the Developer submitted a request for the City to issue a Notice of Completion to San Francisco Public Works seeking confirmation that Horizontal Improvements approved under the Phase 1 Street Improvement Permit (permit number 201E-00486) of the Project which are completed and are ready for acceptance; and

WHEREAS, On November 21, 2024, Public Works issued a Conditional Notice of Completion to the Developer signaling that construction of Phase 1 Horizontal Improvements approved under the Street Improvement Permit was substantially complete and the Horizontal Improvements were ready for acceptance; and

WHEREAS, The DDA requires the Port's Chief Harbor Engineer to make a determination that the Horizontal Improvements have been completed as designed within the timeframes specified in the Schedule of Performance (as defined in the DDA) (the "SOP Compliance Determination"); and

WHEREAS, Horizontal Improvements built to City standards will be owned, maintained, and permitted by the City (Public Works, SFMTA, SFPUC, Department of Technology) ("City Acceptance Items"); Non-standard improvements built within the public ROW will be owned by the Port ("Port Encroachments"), as more particularly described in the IMEP, defined below; improvements built within Port open space will also be owned by the Port ("Port Open Space Assets"); Port Encroachments and Port Open Space Assets are collectively referred to as "Port Assets"; once the acceptance process is complete, the Port will release the Port Assets and City Acceptance Items from the Master Lease premises; and this framework is memorialized in the Interjurisdictional MOU and DDA and further detailed in the memorandum to the Port Commission accompanying this resolution; and

WHEREAS, The Developer's request for SOP Compliance Determination was submitted on December 16, 2024, and conditionally approved by the Acting Chief Harbor Engineer on January 29, 2025. In issuing the Conditional SOP Compliance Determination the Acting Chief Harbor Engineer determined (1) Port Assets to be complete and construction of those Horizontal Improvements to be in accordance with applicable project and regulatory requirements, (2) that the Port Assets are ready for their intended use, and (3) the Developer's compliance with the outside date set forth in the SOP for the completion of certain Phase 1 Horizontal Improvements, subject to additional inspection documentation and completion of certain installations and the acceptance process. Accordingly, it signals certain of these

improvements are ready for acceptance by the Port, and others by the City; and

WHEREAS, Acceptance of improvements is governed by (i) the ICA, (ii) the jurisdictional memorandum of understanding between the Port, SFPUC, Public Works, SFMTA, and San Francisco Fire Department approved by the Port Commission via Resolution No. 20-39 (the “Interjurisdictional MOU”), (iii) the DDA, and (iv) the PIA; and

WHEREAS, Per the DDA, the Developer is responsible for maintenance of Port Assets until they are accepted by the Port Commission; upon Port Commission acceptance, an affiliate of Developer will utilize dues from the Mission Rock Owners Association to fund ongoing maintenance of these items, provided however that contingent services special taxes from the Mission Rock Community Facilities District (“CFD”) may be levied if the Port or City needs to maintain such assets directly; and

WHEREAS, The Port and Public Works have negotiated an Interagency Master Encroachment Permit (“IMEP”), to be approved by the Port Commission and Board of Supervisors, pursuant to which Port will accept maintenance and liability responsibility of the Port Encroachments; and

WHEREAS, Pursuant to the PIA, the Developer provided an irrevocable offer of improvements for both Port Assets, and City Acceptance Items to the Port and City (the “Offer of Improvements”). The Developer may also provide a quit claim deed, subject to the Conditional Assignment of Warranties (defined below) to the Port for Port Assets located outside of City rights-of-way on Port jurisdictional property; and

WHEREAS, Public Works is preparing a Public Works Order (the “Public Works Order”), in which and as specified in the Public Works Order: (1) Public Works determines that the City Acceptance Items and the Port Encroachments are ready for their intended use, following Public Works’ inspection of the Port Encroachments and the City Acceptance Items, and the City Engineer’s issuance of a series of Conditional Notices of Completion, and its determination that these improvements have been completed in substantial conformity with the approved plans, specifications, and applicable City regulations governing the applicable infrastructure improvements; (2) the Public Works Director recommends that the Board of Supervisors approve legislation to accept the City Acceptance Items for maintenance and liability purposes and dedicate the same to public use and designate the same as open public right-of-way for street and roadway purposes subject to specified conditions; (3) the Public Works Director recommends that the Board of Supervisors approve legislation to set the public right-of-way widths, sidewalk widths, and street grades; (4) the Public Works Director recommends that the Board of Supervisors approve amendments to the Public Works Code to

memorialize the Port's exercise of permitting authority for certain retail activations on City sidewalks and that the Board approve amendments to the Public Works Code to ensure that any excavation of or in proximity to lightweight cellular concrete ("LCC") in the Mission Rock Special Use District be performed according to Public Works standards and requirements and according to permits issued by Public Works, including for excavation work that can be completed within 24 hours; (5) the Public Works Director recommends that the Board of Supervisors authorize the Public Works Director to execute an absolving service agreement with Pacific Gas and Electric; (6) the Public Works Director recommends that the Board of Supervisors approve a Master Encroachment Permit for Mission Rock Utilities ("MRU") to permit MRU to maintain the custom improvements and other encroachments in the public right-of-way; (7) the Public Works Director recommends that the Board of Supervisors approve the Port Encroachment IMEP and delegate to the Public Works Director authority to allow assignment to a maintenance contractor or the owners' association responsibility and liability for compliance with Public Works Code Section 706, provided that the Port also approve such assignment and subject to the condition that if allocated to an Owners' Association, the maintenance responsibilities must be addressed in the CC&Rs as a binding requirement on the owners' association and its successors; and (8) the Public Works Director recommends that the Board of Supervisors approve a major encroachment permit to enable the Developer to maintain LCC monitoring instrument encroachments for the Project; and

WHEREAS, Pursuant to the PIA, the Developer will conditionally assign all warranties and guarantees to the City and Port, as applicable, related to the construction of Horizontal Improvements pursuant to that certain Conditional Assignment of Warranties and Guarantees dated May 9, 2022 (the "Conditional Assignment of Warranties"). With respect to any warranties and guarantees that by their term expired prior to acceptance of the Port and City Acceptance Items, the Developer has assumed performance of those warranties pursuant to the DDA (the "Self-Warranties"). A copy of the Conditional Assignment of Warranties, the Self-Warranties, and the draft Public Works Order are on file with the Commission Secretary and are incorporated herein by reference; now, therefore be it

RESOLVED, The Port Commission adopts as its own the environmental findings and the General Plan and Planning Code Section 101.1 consistency findings in the Planning Department letter, as referenced above, in connection with the actions specified in this resolution; and be it further

RESOLVED, That the Port Commission finds that the Port Assets described in the accompanying memorandum are functional and constructed in conformity with the Project Requirements and Regulatory Requirements, each as defined in the DDA; and be it further

RESOLVED, That the Port Commission delegates authority to the Executive Director or the Executive Director's Designee to accept the Amended and Restated Irrevocable Offer of Improvements for the Port Assets; and be it further

RESOLVED, That, subject to (i) the DDA, (ii) the Conditional Assignment of Warranties and/or the Self-Warranties, (iii) execution of the Public Works Order, (iv) entry into the IMEP, and (v) entry into a license with Developer or Developer affiliates for private utilities in China Basin Park, the Bridgeview Paseo, and the Dr. Maya Angelou Way Paseo to be accepted by the Port, (vi) acceptance of City Acceptance Items, (xi) dedication of the applicable Port Assets and City Acceptance Items for public use, (xii) designation of the applicable Port Assets and City Acceptance Items on all City and Port public rights-of-way for street and roadway purposes, (xiii) dedicates Port Assets on public open spaces for public open space purposes, the Port Commission accepts the Port Assets for maintenance and liability purposes; and be it further

RESOLVED, That the Port Commission delegates authority to the Executive Director or the Executive Director's Designee to acknowledge and accept the Conditional Assignment of Warranties related to the construction of the Port Assets, substantially in the form on file with the Commission Secretary and incorporated herein by reference; and be it further

RESOLVED, That the Port Commission recommends that the Board of Supervisors (i) accept ownership of the City Acceptance Items, (ii) dedicate such City Acceptance Items to public use, (iii) designate the City Acceptance Items in the City public right-of-way for street and roadway purposes; and (iv) accept City Acceptance Items for maintenance and liability purposes; and be it further

RESOLVED, That the Port Commission delegates to the Port Director, or the Port Director's designee, the authority to accept any Port Assets identified as deferred infrastructure in, and when compliance with, the Public Works Order and Conditional SOP Compliance Determination; and be it further

RESOLVED, That the Commission authorizes and directs the Port Director, or the Port Director's designee, to execute an Amendment to the Master Lease, a Memorandum of Amendment to the Master Lease, and to record a signed, acknowledged Partial Release from the Master Lease, each substantially in the form on file with the Commission Secretary, to release the Port Assets and City Acceptance Items from the Master Lease, upon acceptance of the City Acceptance Items by the Board of Supervisors and contingent upon approval by the Board of Supervisors, in their sole discretion; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director, in consultation with the City Attorney, to take any and all actions that may be necessary or advisable to effectuate the purpose and intent of this resolution, including but not limited to (1) amending the Conditional Assignment of Warranties, (2) entering into and/or amending the IMEP and exhibits thereto, (3) entering into additional master and/or major encroachment permits, (4) accepting deferred infrastructure, (5) revising the Interjurisdictional MOU, and (6) executing and recording a signed, acknowledged Partial Release from the Master Lease releasing Port Assets and City Acceptance Items from the Master Lease upon acceptance by the City of the City Acceptance Items, which are in the best interests of the Port and City, and that do not materially increase the obligations or liabilities of the Port or materially reduce the rights of the Port, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 11, 2025.

DocuSigned by:

Jenica Lin

Secretary

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**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 25-06

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, In January 2018, by Resolution No. 18-03, the Port Commission approved the terms of a Disposition and Development Agreement (“DDA”), between the Port and the Seawall Lot 337 Associates, LLC, a Delaware limited liability company (“Developer”), and related transaction documents that are incorporated into the DDA, for the development of approximately 28-acres located along the Port’s Central Waterfront and commonly referred to as “Mission Rock” (the “Project”), comprised of (1) Seawall Lot 337, bounded by Third Street on the west, Mission Rock Street on the south, Pier 48 to the east, and China Basin Park on the north; (2) Pier 48; (3) China Basin Park; (4) the marginal wharf between Pier 48 and Pier 50; and (5) Parcel P20 (collectively, the “Site”); and

WHEREAS, Developer and its affiliate, Mission Rock Horizontal Sub (Phase 1) L.L.C., a Delaware limited liability company, provided that certain Amended and Restated Irrevocable Offer of Improvements dated as of February 6, 2025 to the Port regarding certain infrastructure and improvements associated with Port parks and opens spaces including China Basin Park, Dr. Maya Angelou Paseo, Bridgeview Paseo, and Channel Street, and associated with City rights-of-way including Toni Stone Crossing, Bridgeview Way, and Dr. Maya Angelou Lane (collectively, the “Port Assets”), all as more particularly described in the memorandum to the Port Commission and its attachments accompanying this resolution; and

WHEREAS, At its February 11, 2025 meeting, the Port Commission accepted the Port Assets subject to certain conditions, including the execution of certain land use agreements with Developer affiliates and/or utility providers to facilitate the ongoing operation and maintenance of Port Assets; and

WHEREAS, In a letter dated February 6, 2025, the Planning Department found that the actions contemplated in this resolution are within the scope of the Project’s final environmental impact report prepared under the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) and are, on balance, in conformance with the General Plan and the eight priority policies of Planning Code Section 101.1. A copy of the Planning Department letter is on file with the Commission Secretary and is incorporated herein by reference; and

WHEREAS, The Port Commission approved Resolution 19-39 on September 24, 2019, adopting a Parks Plan for the Project that contemplated that the Port could work with a partner to conduct the day-to-day management of Project parks and open spaces while allowing the Port to retain ownership of Project parks and open spaces and ensure that the spaces remain public, welcoming, and inviting to all; and

WHEREAS, Port staff negotiated: (a) a lease and loan agreement, (b) management agreement, and (c) a series of licenses to further the goals and approach contemplated in the Park Plan and Resolution 19-39; and

WHEREAS, Port and Developer affiliate have negotiated the China Basin Park Lease and Loan Agreement (the "Park Lease and Loan"), through which Port would (a) provide a zero-rent lease of China Basin Park to a Developer affiliate for management, maintenance, activation, and programming for public park purposes for a term of fifteen years, plus three Developer affiliate options to extend for five years each for a total potential term of thirty years, including certain indemnities benefiting the Port and City, and (b) subject to appropriation by the Port Commission and Board of Supervisors, provide a zero interest loan of up to Eight Hundred Thousand Dollars over three years for baseline maintenance and operations purposes, subject to repayment prior to the conclusion of the initial fifteen-year term, as described in the memorandum to the Port Commission accompanying this resolution, which Park Lease and Loan requires approval by the Board of Supervisors. A copy of the Park Lease and Loan is on file with the Commission Secretary; and

WHEREAS, The Park Lease and Loan Agreement contemplates certain delegations of authority by the Port Commission to the Port Executive Director for certain administrative functions, including the abilities to (a) revise the China Basin Park leased premises to facilitate construction of future park improvements, (b) approve certain sponsorship agreements that do not exceed ten years, and (c) approve future annual budgets that fall within the Permitted Variance of the prior year's Budget, all without seeking additional Port Commission approval and each as more particularly described in the Park Lease and Loan; and

WHEREAS, Port and Developer affiliate have negotiated the Mission Rock Paseos and Open Space Management Agreement ("Management Agreement"), requires a Developer affiliate to maintain and operate (a) the Port paseos as public open space, to (b) Port Assets subject to and in accordance with conditions included in Public Works' Interagency Master Encroachment Permit ("IMEP"), (c) other Port Assets in the Project area, and (d) assist Port with any associated claim, while the Port retains full control of this property as public space funded with tax-exempt bond proceeds in accordance with Internal Revenue Service ("IRS") laws and regulations for a term of fifteen years plus

three Port options to extend for five years each for a total potential term of thirty years, as described in the memorandum to the Port Commission accompanying this resolution, which Management Agreement requires approval by the Board of Supervisors. A copy of the Management Agreement is on file with the Commission Secretary; and

WHEREAS, A Developer affiliate is best positioned to operate, maintain, and program China Basin Park and other Port-owned spaces and Port Assets in Mission Rock as an affiliate of the Master and Vertical Developers, because the primary funding mechanisms for the Park Lease and Loan Agreement and to pay the management fee and reimburse managers costs under the Management Agreement is contributions from the Mission Rock Owners Association, which is anticipated to receive dues and distribute funds in lieu of levying the Contingent Services Special Taxes under the Mission Rock Community Facilities District, accordingly, the Developer affiliate will be able to more easily administer funding for management and maintenance operations and benefit from economies of scale by leasing China Basin Park and managing Port Assets under the Management Agreement; and

WHEREAS, Because the Port cannot provide Pacific Gas and Electric ("PG&E") with an easement or other permanent land rights, Port and PG&E have negotiated (a) one no-fee license agreement allowing PG&E to enter Port property to operate and maintain gas pipelines located in Port open space that serve buildings on Lot 3 and Lot 4 of the Project, and (b) one no-fee license agreement allowing PG&E to enter Port property to operate and maintain an electric line located in China Basin Park to serve the Third Street Bridge "Pilot House," each for a term of sixty-six years subject to approval by the Board of Supervisors, and each protecting the Port from certain liability related to PG&E's utility infrastructure and activities, and for which PG&E requires an Absolving Services Agreement ("ASA") that acknowledges the expiration or termination of the electric line license may result in electric power service termination to the Pilot House and in which the Port and City expressly indemnify PG&E from liability, claims, and damages connected with such discontinuance of service. A copy of the PG&E licenses and ASA are on file with the Commission Secretary; and

WHEREAS, Port and Mission Rock Utilities, Inc., a Delaware corporation ("MRU") that will own and operate district utilities, have negotiated a no-fee license agreement to enter Port property to operate and maintain private utilities including district heating and cooling, recycled water treatment and distribution, and sanitary sewers while protecting the Port from certain liability related to MRU's utility infrastructure and activities, which license requires approval by the Board of Supervisors. A copy of the MRU license is on file with the Commission Secretary; and

WHEREAS, Pursuant to Port Permit Number B-2025-0002 and subject to the proposed Park Lease and Loan Agreement, China Basin Ballpark Company LLC (the SF Giants) and Developer affiliate have negotiated an agreement for the SF Giants to install, maintain, and remove upon termination a Commemorative Paver program within a portion of the pedestrian path of the Bay Trail in China Basin Park as a capital improvement sponsor, through which the SF Giants will pay for the Commemorative Paver program and dedicate any excess revenues from the capital improvement sponsorship to the maintenance and operations of China Basin Park, which sponsorship would require Port Commission approval under the proposed terms of the Park Lease and Loan Agreement as a sponsorship agreement with a term in excess of ten years that includes a Major Physical Element as defined the Park Lease and Loan Agreement. A copy of Port's consent to the sponsorship agreement is on file with the Commission Secretary; now, therefore be it

RESOLVED, That the Port Commission approves (a) the Park Lease and Loan Agreement and Delegations of Authority to the Port Executive Director described in this resolution, (b) the Management Agreement, (c) the PG&E licenses and ASA, (d) the MRU license, and (e) Port's consent to the sponsorship agreement between Developer affiliate and the SF Giants, each in substantially the same form as is on file with the Commission Secretary, and subject to the approval by the Board of Supervisors; and be it further

RESOLVED, That the Port Commission recommends the Board of Supervisors approve (a) the Park Lease and Loan Agreement, (b) the Management Agreement, (c) the PG&E licenses and ASA, and (d) the MRU license, and delegate authority for the Port Director, or the Port Director's designee, to execute such agreements, subject further to approval and execution of the ASA by the San Francisco Public Works Director or the Director's designee; and be it further

RESOLVED, In consideration for funding both (a) operations, maintenance, and activations of China Basin Park and (b) management services under the Management Agreement, through direct Mission Rock Owners Association contributions to Developer affiliate in lieu of levying the Contingent Services Special Taxes under the Mission Rock CFD, and the economies of scale that may be achieved by one entity leasing China Basin Park and managing Port Assets under the Management Agreement, the Port Commission recommends that Port staff, in consultation with the City Attorney's Office, seek Board of Supervisors' approval to waive any applicable requirements of the City's policies regarding competitive bidding and competitive solicitations for the Park Lease and Loan Agreement and the Management Agreement; and be it further

RESOLVED, Upon approval of such waivers and of the agreements by the Board of Supervisors, Port staff shall proceed to execute the Park Lease and Loan Agreement and the Management Agreement, each with substantially the same terms as, and under the authority set forth in, this resolution and accompanying memorandum to the Port Commission; and be it further

RESOLVED, That the Port Commission approves the Port consent to SF Giants Commemorative Paver program sponsorship agreement as described in this resolution and the accompanying memorandum to the Port Commission; and be it further

RESOLVED, That if the Mission Rock Owners Association does not annually provide contributions for the operation and maintenance of China Basin Park or other Port Assets and open spaces pursuant to the Park Lease and Loan Agreement and the Management Agreement that are equal to the Maximum Contingent Services Special Tax Amount under the Mission Rock CFD for that year, then the Port will direct the Administrator of the Mission Rock Special Tax District to levy the Contingent Services Special Tax in the amount of any shortfall; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director, in consultation with the City Attorney and Bond Counsel, to take any and all actions necessary to amend, revise, or restate the Management Agreement and all other agreements authorized in this resolution to ensure spaces financed with tax-exempt bond proceeds comply with applicable IRS laws and regulations, and further remain well-maintained, open, available, and a benefit to the public; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director, in consultation with the City Attorney, to take any and all actions reasonably necessary or advisable to effectuate the purpose and intent of this resolution, including but not limited to amending any of the approved agreements and exhibits thereto, which actions are in the best interests of the City and Port, and that do not materially increase the obligations or liabilities of the Port or materially reduce the rights of the Port, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 11, 2025.

DocuSigned by:

A blue ink signature of Jenica Lin, written in a cursive style.

Secretary

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EXHIBIT A Site Map

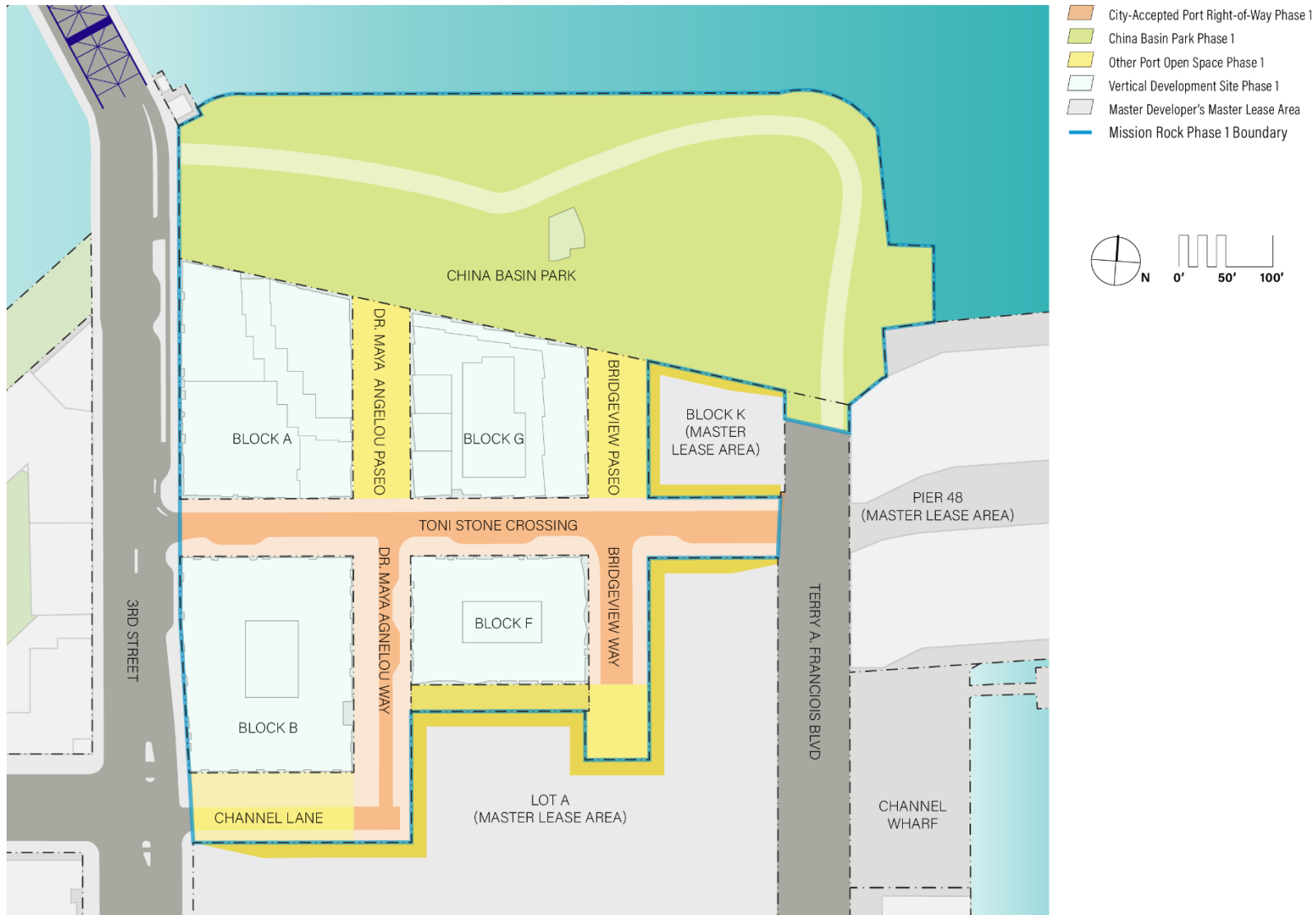


EXHIBIT B

Port Open Space Assets

Port Open Space Assets

With the exception of limited 3rd party utility systems, all improvements constructed within Port open space will be owned and maintained by the Port. Assets in Port open space include:

- Canopy trees, turf grass, landscaped planting areas, and associated irrigation systems;
- A central rain garden used to treat stormwater runoff for the entire Phase 1 development (Port open spaces, city rights-of-way, and vertical development parcels), and associated boardwalk;
- A dog run and dog relief area;
- Lightweight fill (used to elevate the site to mitigate against future sea-level rise);
- A public restroom building, and assorted hardware and fixtures;
- A sandy “beach” area;
- Surface paving;
- Two sculptural art installations;
- Three stormwater lift stations and associated infrastructure used to convey stormwater to and from the central rain garden;
- Ramps, staircases, and assorted railings,
- Retaining walls;
- Site lighting elements;
- Site furnishings (e.g. benches, picnic tables, movable seating and tables);
- Underground utility systems;
- Wayfinding and site information signage;
- Interim site features that will be removed in future phases needed to ensure the site performs safely and functionally (the cul-de-sac at the southern terminus of Bridgeview Street, and Sloped berms to conform the elevated Phase 1 site safely meet existing grade

EXHIBIT C

Port ROW Assets

Port ROW Assets

As established in the maintenance matrix attached as an exhibit to the Interjurisdictional MOU, most non-standard items within the City ROWs are Port Acceptance Items. As such, the Port will own, maintain, and have liability for these items. This arrangement will be memorialized via the IMEP between Public Works and the Port upon approval by the BOS, which is anticipated early next year. Port ROW Assets include:

Furniture and Vertical Elements

- Three sculptural public art installations 1 (Toni Stone)
- Custom benches
- Custom waste receptacles
- Custom wayfinding signage
- Two retractable bollards operation pedestals and associated electrical conduit used by the San Francisco Fire Department to lower the retractable bollards and gain access to the Bridgeview and Dr. Maya Angelou Paseos
- Tree grates
- Sidewalk landscaping areas and associated irrigation systems

Unique Design Features on Dr. Maya Way

- Flush Electrical Outlets, and associated infrastructure (electrical conduit, junction boxes, etc.)
- Stone Blocks (Streetlight Protection Elements on Dr. Maya Angelou Way)
- A Trench Drain running the length of the street
- Trapezoidal Tactile Delineators in lieu of curbs to ensure people with vision to ensure people with vision impairments can safely navigate the roadway
- Fire Lane Markers defining the roadway
- Custom surface paving

Miscellaneous Items

- Non-standard concrete paving within the Toni Stone / Dr. Maya Angelou Way intersection
- Unit pavers installed in the Bridgeview Street sidewalk furnishing zone
- Interim surface features in the Channel Lane / Dr. Maya Angelou Way intersection that will be removed when Phase 2 is constructed
- Two underground storm drain mains connecting the Bridgeview and Dr. Maya Angelou Paseos to the SFPUC storm drain main in Toni Stone Crossing
- Underground electrical conduit serving China Basin Park connecting the Bridgeview Paseo to SFPUC 12-kV electrical infrastructure on Toni Stone Crossing
- Custom “deepened curbs” adjacent to planting areas
- Nonstandard curb wrapping around PG&E manhole and associated railing on 3rd Street fronting China Basin Park

Bay Trail Commemorative Paver Design Concept and Proposed Location

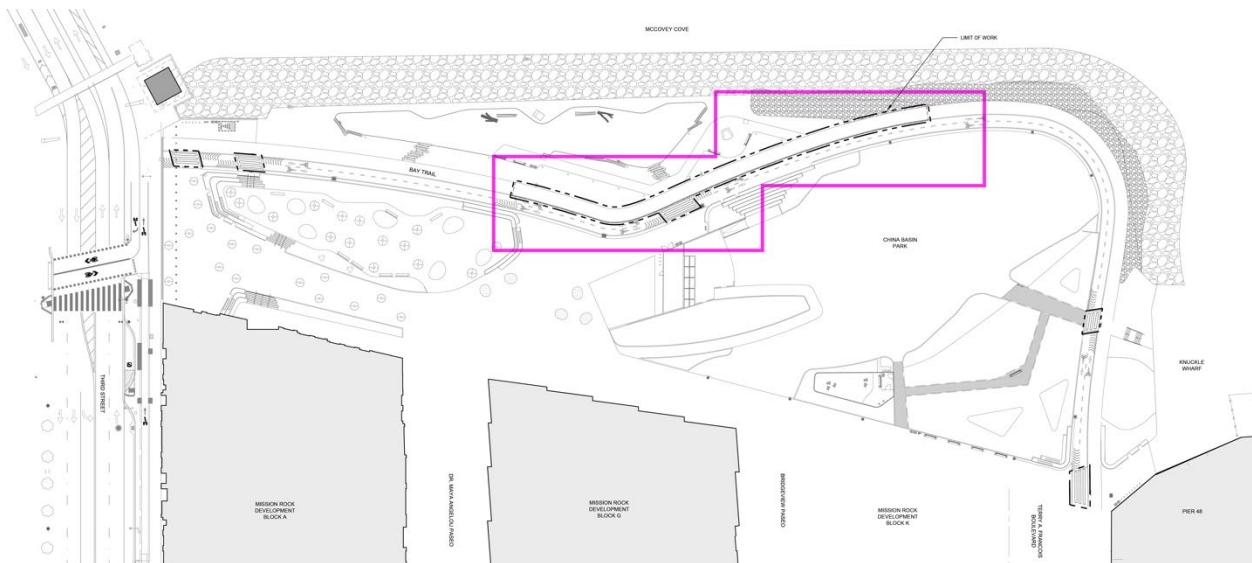


EXHIBIT E
CHINA BASIN PARK AND PASEO AND OPEN SPACE
FIRST YEAR OPERATING BUDGET

[Attached as separate document]

Mission Rock Acceptance of Phase 1 Horizontal Infrastructure, Approval of Lease and Loan Agreement and Management Agreement, and Approval of Various Land Agreements

Port Commission Informational & Possible Action Item 12A

February 11, 2025

Presented By:
Wyatt Donnelly-Landolt
Carrie Morris
Paul Chasan



Agenda

- Site Overview & Context
- Project Update
- Port Acceptance Process
- Port Acceptance Items
- Acceptance Documentation & Land Rights Agreements
- Next Steps

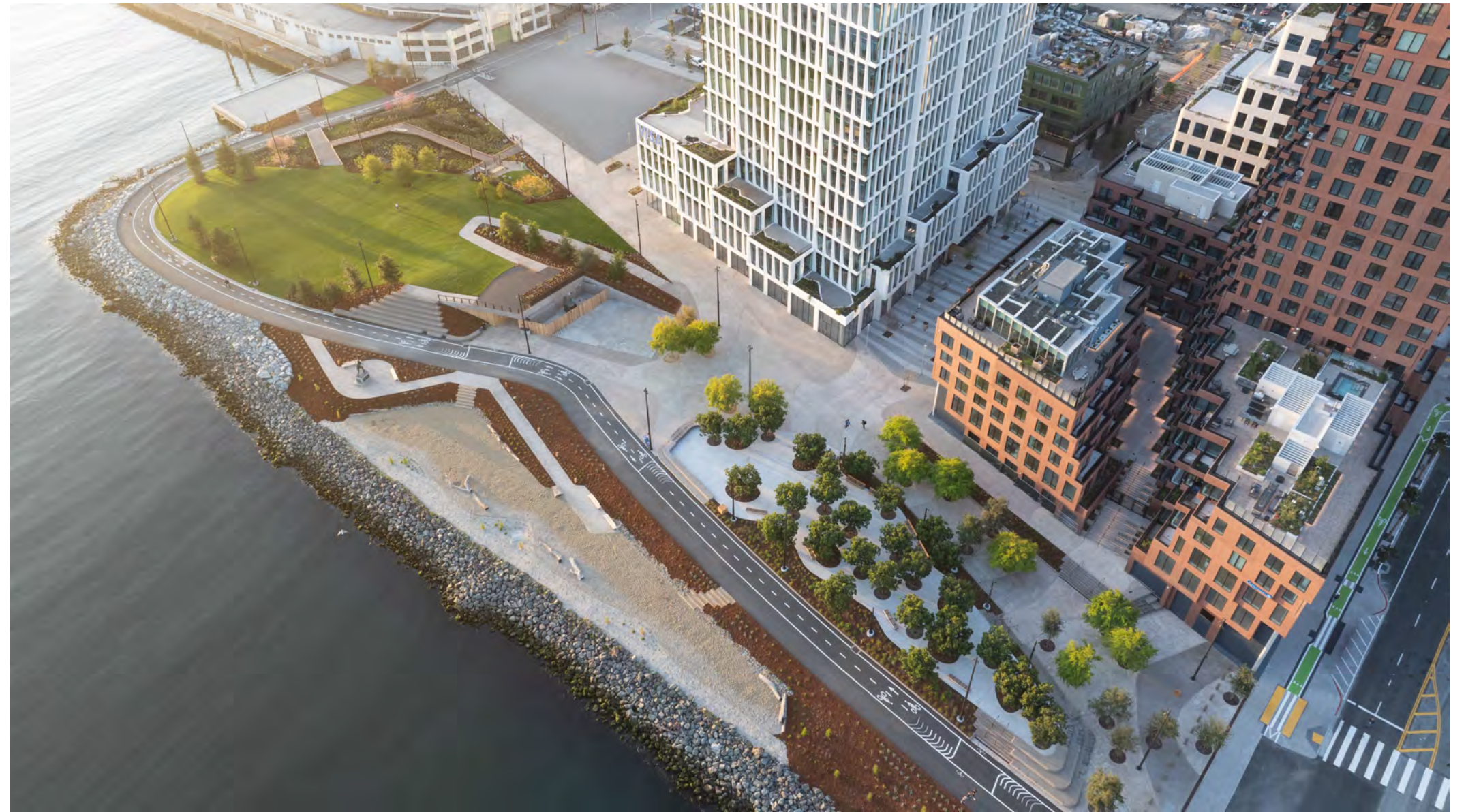


Photo by Jason O'Rear

Site Overview & Context – Phase 1

Housing: 2 buildings

- 537 units total, 161 affordable

Commercial Office: 2 buildings

- 550,000 gross square feet

Ground Floor Retail

- 52,000 square feet

China Basin Park, 5 Acres

District Energy + Non-potable Blackwater Systems

Infrastructure

- Phase 1 streets, sidewalks, associated improvements, utilities, public open spaces/paseos



Project Update

Vertical Progress

- The Canyon (Parcel A): 86% Leased
- Verde (Parcel F): 51% leased
- Visa Global Headquarters (Parcel G): 100% leased and occupied
- Building B: Golden State Warriors
- Retail 70% leased: LuxFit, Arsicault, Flour+Water, Proper Food, Ike's Love & Sandwiches, Quik Dog, Back Home Hospitality

Local Business Enterprise (as of Q2 2024)

- \$170.3M of \$934.6M awarded (18.22%)
- 105 LBE Vendors of 467 Total Vendors (22.5%)

Horizontal Project Budget

- Approved Phase 1 Budget: \$218,470,355
- As of June 30, 2024: On budget, \$3M remaining in contingency

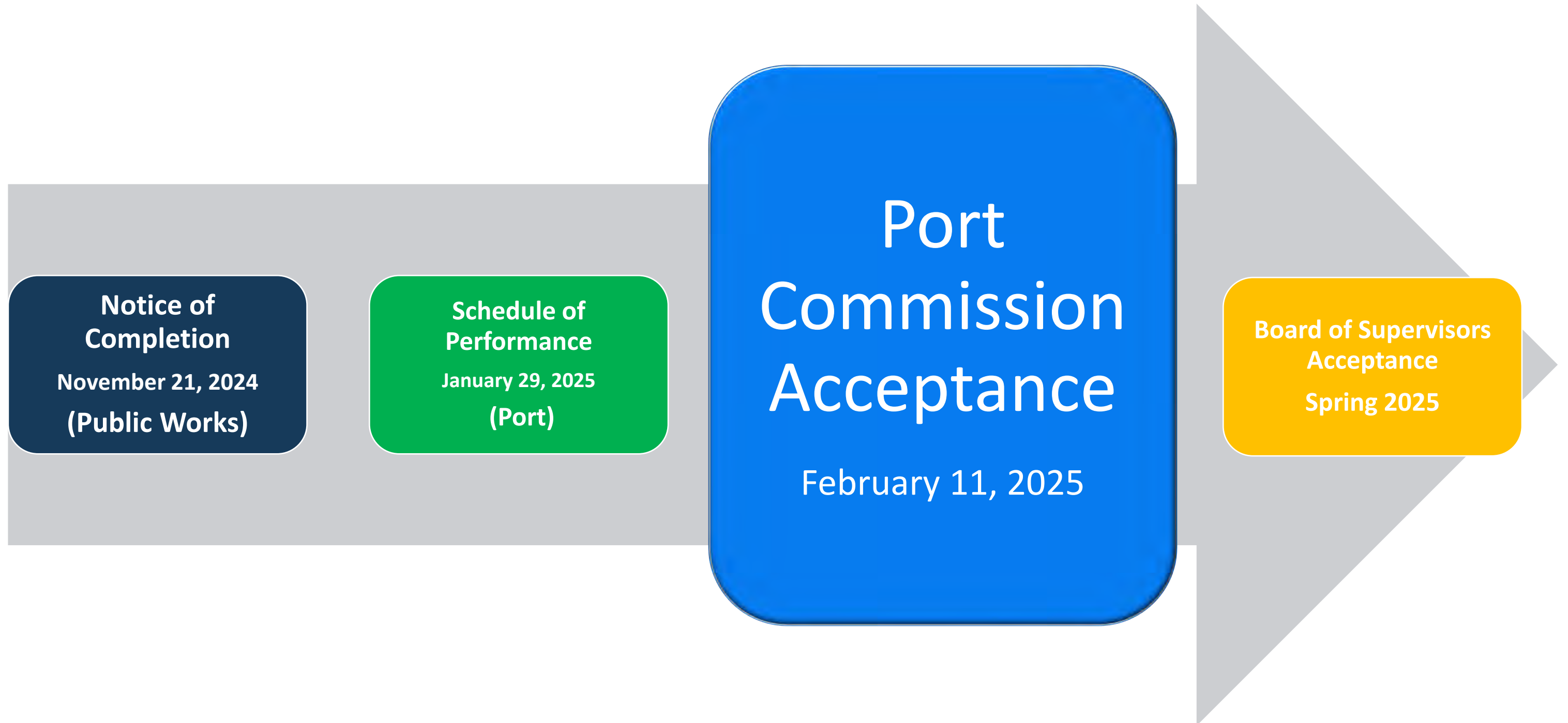
City Costs

- Approved budget: \$19,577,000
- Currently on budget



Photo by Jason O'Rear

Acceptance Process



Acceptance Process - Port Commission's Role



Photo by Jason O'Rear

- Determine improvements to be functional and in conformance with project and regulatory requirements
- Accept improvements from horizontal developer for:
 1. Public use
 2. Maintenance and liability purposes for certain improvements on Port-owned property
- Dedicate improvements for street and sidewalk purposes
- Approve third-party agreements for management and operations

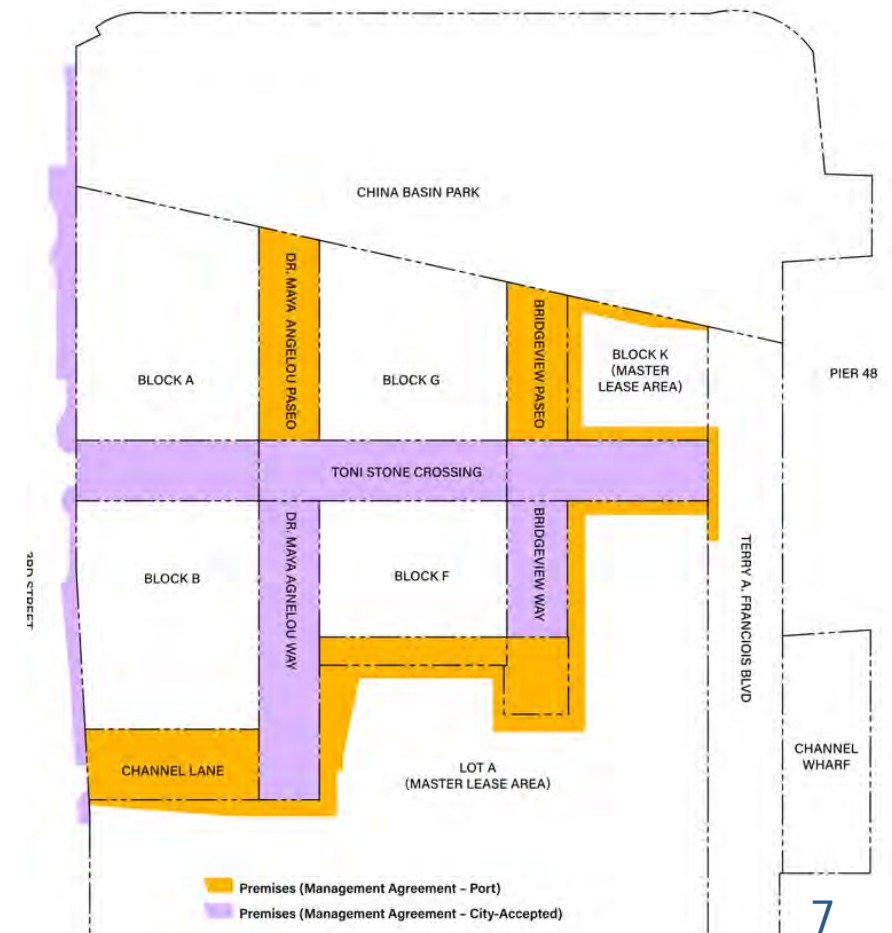
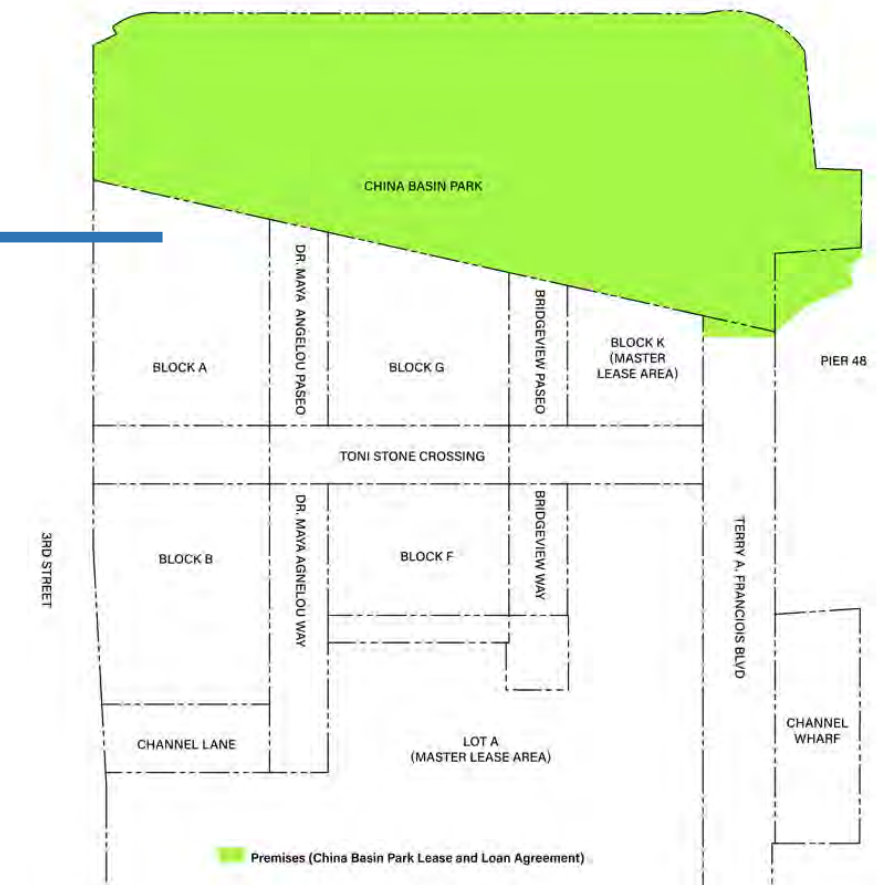
Port Acceptance Items

China Basin Park / Port Open Spaces – All Assets

- Plantings: Landscaping, trees, stormwater garden, irrigation systems, paving
- Spaces: Dog run, public restrooms, “beach”, seat walls, plazas
- Utilities: Lighting furnishings, bollards, water fountains, utilities systems

City-Accepted Port Streets – Only Non-Standard Assets

- Surface features: Custom benches & trash cans, public art, landscaping
- Shared Public Way features: Special paving, stone bollards, trench drain, fire lane markers, flush curbs
- Utilities: Port electrical system in DMA for activation, irrigation systems, utility connections to Port open space



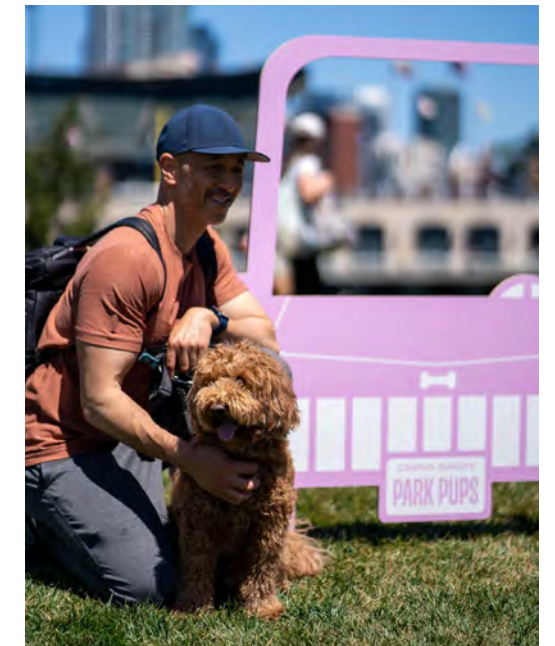
Acceptance Documentation

Interagency Master Encroachment Permit (IMEP)

- Permit issued by Public Works to Port for all Port-owned, non-standard assets in City Rights of Way
- Port to assign all IMEP maintenance obligations to MRC via Paseos Management & Open Space Management Agreement *(described further later in presentation)*

Jurisdictional Memorandum of Understanding & Maintenance Matrix (JMOU)

- MOU between Port and City Agencies documenting each agency's maintenance obligations for specific Mission Rock assets



Acceptance Documentation

DDA and Master Lease Partial Release

- Removes completed Phase 1 horizontal infrastructure that is being accepted by Port and other City Agencies from the DDA and Master Lease

Master Lease Amendment

- Adjusts and amends description and definition of “Premises” to remove completed Phase 1 horizontal infrastructure



Photo by Jason O'Rear

Lease, Management, and Land Rights Agreements

1. China Basin Park Lease & Loan Agreement ("Park Lease")
2. Paseos & Open Space Management Agreement ("Management Agreement")
3. PG&E Gas Licenses
4. PG&E Electric License and Absolving Services Agreement
5. Mission Rock Utilities License



Photo by Jason O'Rear

China Basin Park Lease & Loan Agreement

- Lease of China Basin Park to affiliate of Mission Rock Partners for operations, maintenance and programming
- 15-year term with three, 5-year extension options
- Transfers maintenance and liability obligations for China Basin Park from Port to Tenant
- Tenant funds maintenance through Master Association dues, Contingent Special Services Tax serves as a backup
- Tenant will obtain sponsorships and create programming to generate revenues for operations
- Port approves annual budgets, receives quarterly and annual reporting, and reviews major sponsorships
- Provides start up loan facilitated by RPD of \$300k annually during the first three years up to a maximum of \$800,000



Photos by Jason O'Rear

Paseos & Open Space Management Agreement

- Qualified management agreement designating Manager to operate and maintain open space and Port Assets (excluding China Basin Park)
- 15-year term with three, 5-year extension options
- Manager receives \$10,000/year management fee and reimbursement for maintenance and operations costs
- Master Association provides revenues with Contingent Special Services Tax as a secondary option
- Transfers liability obligations for paseos and open space from Port to Developer affiliate to the extent allowed for a qualified management agreement
- Strict limitations on private uses (e.g., retail sidewalk seating) to be set by master agreement with review of City Attorney and Bond Counsel



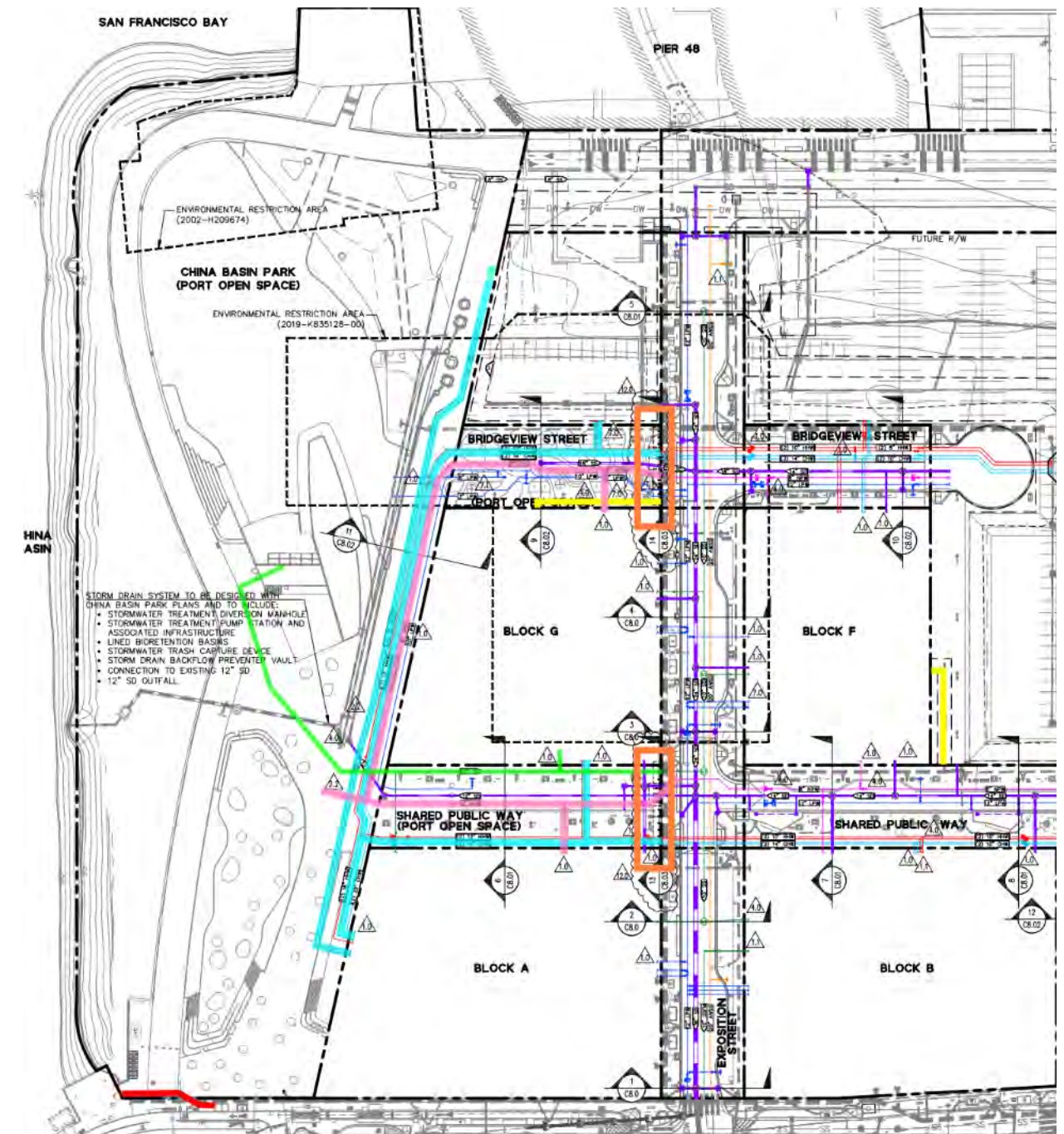
Land Rights / Access Agreements

PG&E Licenses, Absolving Services Agreement

- Grants access rights to PG&E for:
 1. Maintenance and repair of two gas lines to Building G (Visa) and Building F (Verde)
 2. Electric line through China Basin Park to the 3rd Street Bridge Pilot House
- 66-year term with no fee
- Electric license requires Absolving Services Agreement

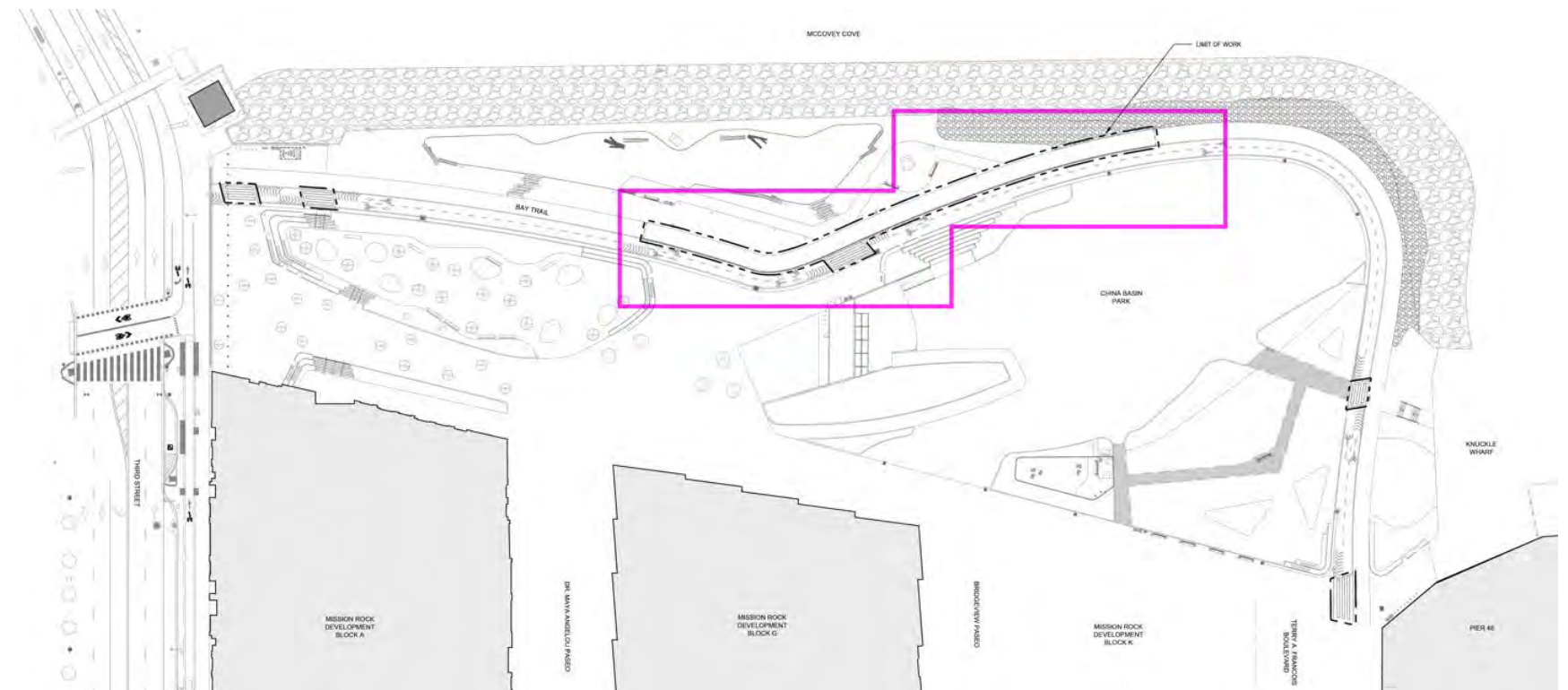
Mission Rock Utilities License

- Grants access rights to MRU for District Energy System and Blackwater Recycling System infrastructure
- 66-year term with no fee



San Francisco Giants' Commemorative Paver Sponsorship

- Capital Improvement sponsorship to construct commemorative pavers in pedestrian portion of Bay Trail through China Basin Park and place 13 plaques at trees in park
- Potential for expansion in future phases
- Requirement to remove pavers and restore to original condition upon Park Lease termination, if Port requires



Today's Actions

1. Approve Acceptance Documentation and Agreements

- IMEP
- DDA & Master Lease Partial Release, Master Lease Amendment
- China Basin Park Lease, Paseos & Open Space Management Agreement
- PG&E Gas and Electric Licenses
- MRU License
- Consent to SF Giants' Paver Sponsorship

2. Accept Port Infrastructure

- CBP, Port Open Spaces, IMEP Assets
- Dedicate for public purposes



Photo by Jason O'Rear

Next Steps

Late Feb/Early March

- Introduce legislation at Board of Supervisors

Late March/Early April

- Acceptance Items at Land Use Committee
- Park Lease, Management Agreement, and other Port agreements at Budget Committee

April

- Full Board Vote

May/June

- Acceptance Complete and Agreements Executed



Photo by Jason O'Rear

An aerial photograph of a city waterfront, likely San Francisco. In the foreground, there's a body of water with a bridge structure visible on the left. A large, modern building complex with multiple towers is the central focus. The buildings have a mix of brick and glass facades. To the left of the buildings is a landscaped area with trees and a road. In the background, the harbor is visible with some ships and distant hills under a hazy sky.

Questions?

Reference

1. Phase 1 Overview / Site Plan
2. Phase 1 + Full Project Buildout Maps
3. Phase 1 Public Art
4. Mission Rock Project Buildout Overview

Phase 1 Overview / Site Plan

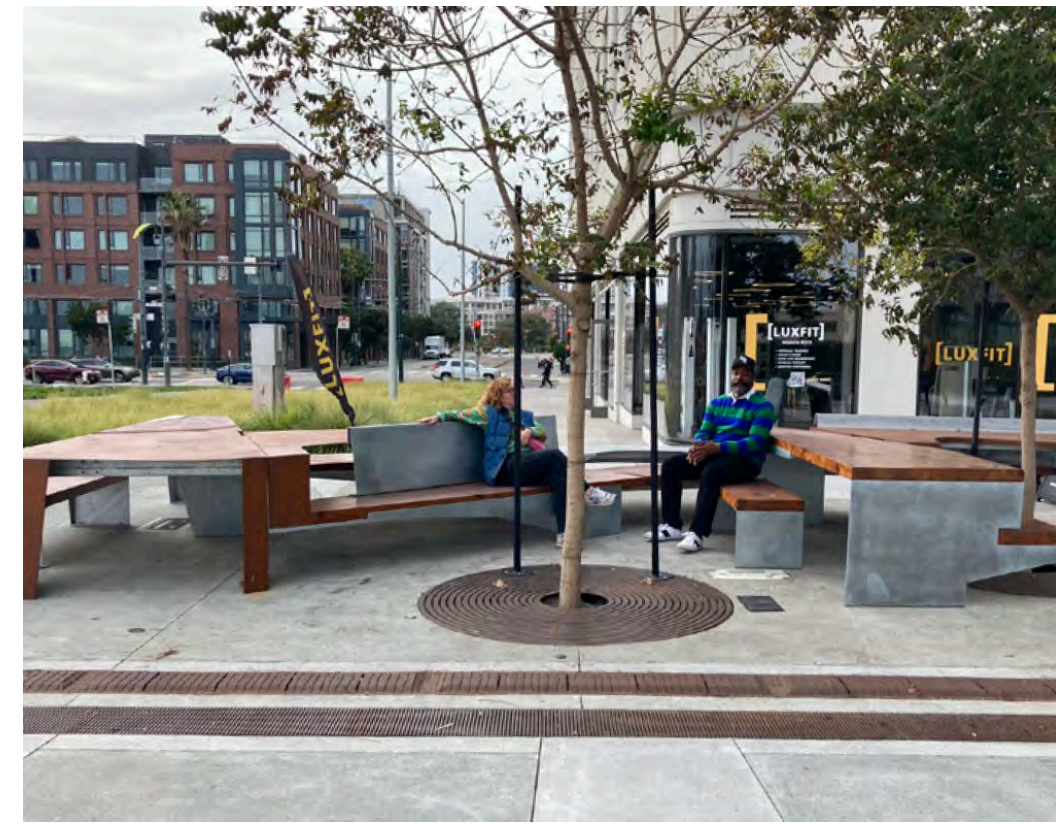


- City-Accepted Port Right-of-Way Phase 1
- China Basin Park Phase 1
- Other Port Open Space Phase 1
- Vertical Development Site Phase 1
- Master Developer's Master Lease Area
- Mission Rock Phase 1 Boundary

Phase 1 + Fully Project Buildout



- City-Accepted Port Right-of-Way Phase 1
- City-Accepted Port Right-of-Way Future Phase
- China Basin Park and Future Parks
- Other Port Open Space Phase 1
- Vertical Development Site Phase 1
- Vertical Development Site Future Phase
- Mission Rock Phase 1 Boundary



Phase 1 Public Art & Street Rooms

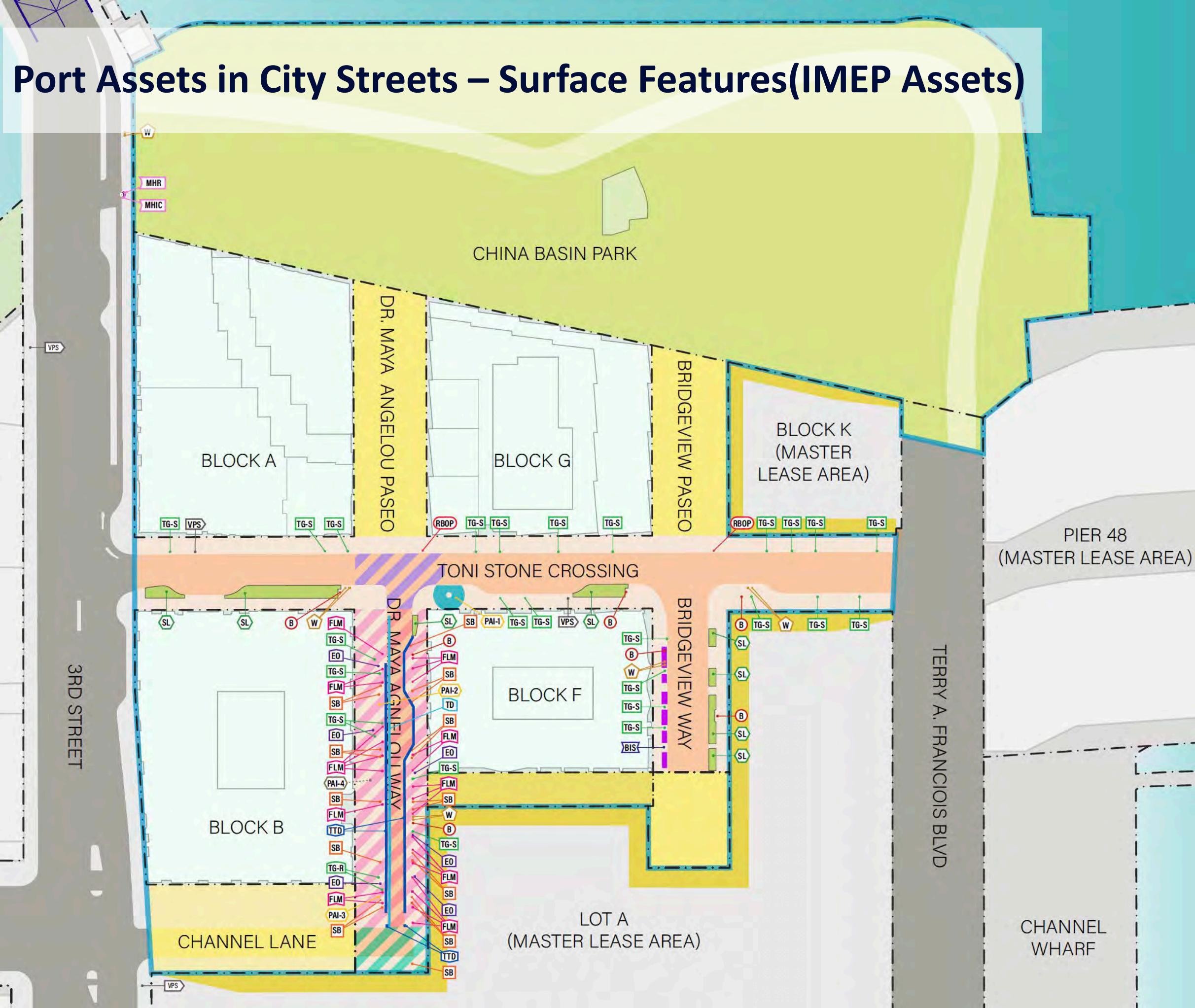
Top Left: Toni Stone Statue by Dana King

Top Middle: Pop Rocks by Terrain Work (Image: Terrain Work)

Top Right: Open Table by Oyler Wu

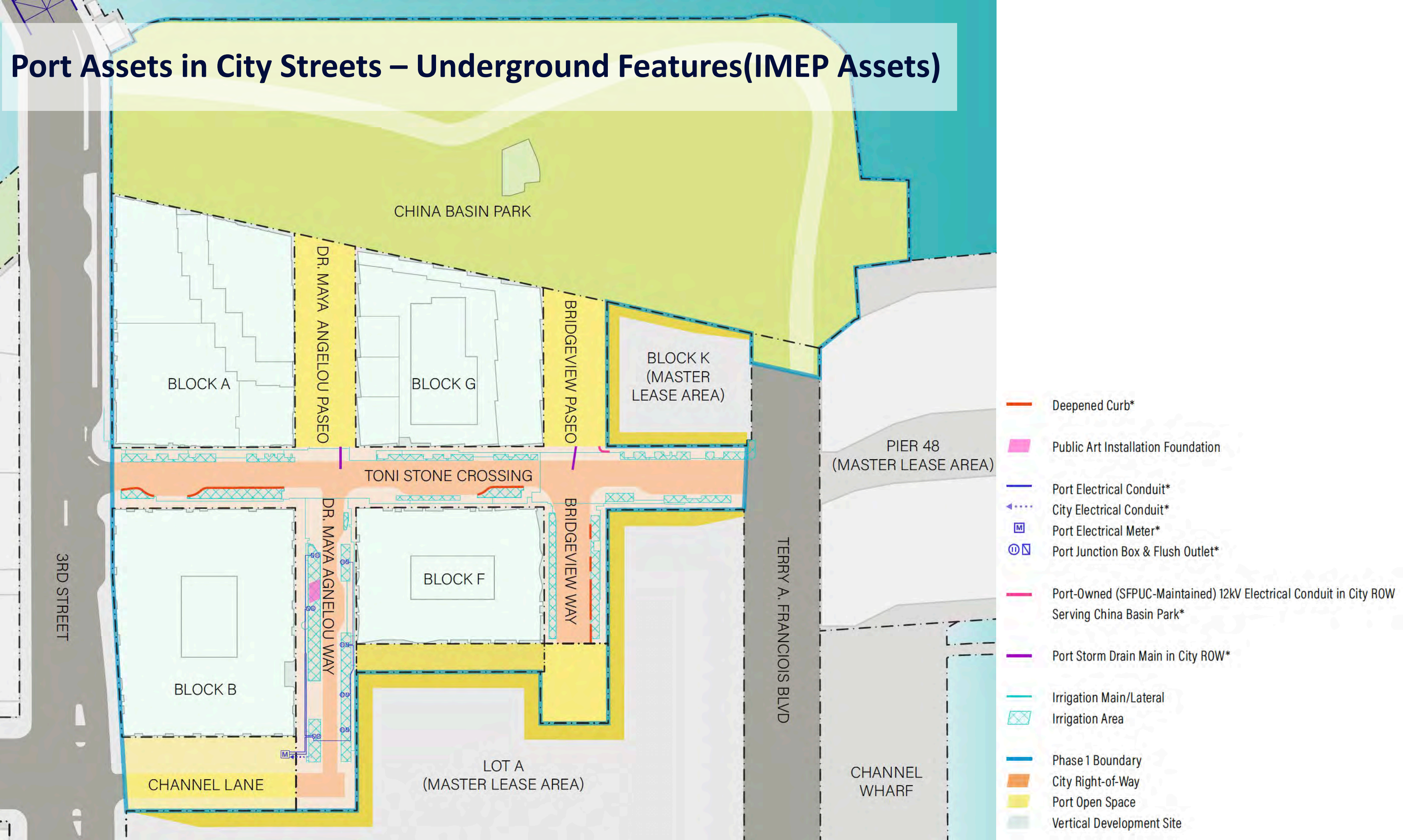
Bottom Right: Garden Party by Min Design (Image: Min Design)

Port Assets in City Streets – Surface Features(IMEP Assets)



- PAI-1** Public Art Installation 1 ("Toni Stone")
- PAI-2** Public Art Installation 2 ("Pop Rocks")
- PAI-3** Public Art Installation 3 ("Open Table")
- PAI-4** Deferred Public Art Installation 4 ("Lounge")
- B** Bench
- W** Waste Receptacle
- SB** Stone Block (Streetlight Protection Element)
- RBOP** SFFD Raptor Bollard Operating Pedestal*
- FLM** Fire Lane Marker*
- EO** Flush Electrical Outlet
- TTD** Tactile Trapezoidal Delineators*
- TD** Trench Drain*
- TG-R** Round Tree Grate
- TG-S** Square Tree Grate
- SL** Sidewalk Landscaping
- MHR** 3rd St. Manhole Railing
- MHIC** 3rd St. Manhole Inverted Curb
- PAT** Pedestrian Amenity Totem (None in Phase 1)
- PDT** Pedestrian Directional Totem
- BIS** Bike Informational Sign
- PD** Public Dock Sign (None in Phase 1)
- TPS** Bay Trail | Pub. Shoreline Sign (None in Phase 1)
- VPS** Vehicular Parking Sign
- Public Art Special Paving
- Bridgeview Furnishing Zone Unit Pavers
- Intersection Special Paving
- Dr. Maya Angelou Way Special Paving*
- Interim Surface Features
- Phase 1 Boundary
- City Right-of-Way
- China Basin Park
- Other Port Open Space
- Vertical Development Site

Port Assets in City Streets – Underground Features(IMEP Assets)



Mission Rock Commons

DRAFT Initial Operations & Programming Budget - 2025 Split

Draft: February 6, 2025

GENERAL				
	2025 CBP	2025 Streets + Paseos	2025 Total	Notes
BASELINE REVENUE				
Vertical Parcel Dues / Special Services Tax Equivalent	\$ 1,116,770	\$ 372,257	\$ 1,489,026	3% Escalation
ADDITIONAL ASSUMED REVENUE				
Parkside Restaurant Outdoor Use	\$ 10,000		\$ 10,000	License fee from adjacent restaurant retailers
Paseo Restaurant Outdoor Use		\$ 2,000	\$ 2,000	License fee from adjacent restaurant retailers
Street Restaurant Outdoor Use		\$ 1,000	\$ 1,000	License fee from adjacent restaurant retailers
Parcel K Rent to CBP			\$ -	To be negotiated in a future agreement
	\$ 1,126,770	\$ 375,257	\$ 1,502,026	
EXPENSES				
Site				
Facilities & Engineering				
Facilities Staffing	\$ 198,185	\$ 66,062	\$ 264,247	0.75 FTE
Facilities Office	\$ 4,629	\$ 1,543	\$ 6,172	
Maintenance & Repairs				
Sprinkler Testing	\$ 1,275	\$ 425	\$ 1,700	
Plumbing Repairs & Maintenance	\$ 13,600		\$ 13,600	
Door Maintenance & Repairs	\$ 3,000		\$ 3,000	
Sidewalk Repair	\$ 4,050	\$ 1,350	\$ 5,400	
Metal Maintenance	\$ 9,000	\$ 3,000	\$ 12,000	
Painting	\$ 4,500	\$ 1,500	\$ 6,000	
Security Equipment & Maintenance	\$ 17,507	\$ 5,836	\$ 23,343	
Fire Alarm & Equip. Testing	\$ 3,500		\$ 3,500	
Exterior Landscaping	\$ 63,113	\$ 21,038	\$ 84,150	Under partial warranty
Radio Maintenance	\$ 2,550	\$ 850	\$ 3,400	
Permits	\$ 113	\$ 38	\$ 150	
Custodial				
Day Cleaning	\$ 216,736	\$ 72,245	\$ 288,981	Pressure Washing/Steam Cleaning: (1x week); Litter/debris collection, sweeping (3x week/ 2x day- min) CBP restroom service: (7-day/ week, min 2x day service on non-peak demand times and min 3x day service on high-peak demands); Disposal: (7 day-week); Street Sweeper: (1x week); Graffiti Removal: As needed
Exterminating	\$ 2,673	\$ 891	\$ 3,564	
Janitorial/Cleaning Supplies	\$ 4,500	\$ 1,500	\$ 6,000	
Rubbish Removal	\$ 2,250	\$ 750	\$ 3,000	
Utilities / Other				
Electric	\$ 13,500	\$ 4,500	\$ 18,000	
Water & Sewer	\$ 488,727	\$ 162,909	\$ 651,636	
CBP Capital Assessment Report	NA	NA	-	Assessment to inform capital planning , to be completed in 2026
Administrative			\$ -	
Management Fee		\$ 10,000	\$ 10,000	
Administrator	\$ 43,002	\$ 1,001	\$ 44,002	Accounting, reporting, and contract management
Audit + Legal + Filing Fees	\$ 6,165	\$ 2,055	\$ 8,220	
Insurance				
Commercial General Liability	\$ 180,000	\$ 60,000	\$ 240,000	\$40M GL
TOTAL BASELINE OPERATING COSTS	\$ 1,282,573	\$ 417,491	\$ 1,700,065	
NET OPERATING DEFICIT WITH ADDITIONAL REVENUE	\$ (155,804)	\$ (42,235)	\$ (198,039)	
PROGRAMMING & SPONSORSHIPS				
	2025 CBP	2025 Streets + Paseos	2025 Total	
REVENUE				
Concessions + F&B	\$ 53,000		\$ 53,000	Food trucks, alcohol
CBP Sponsorships	\$ 150,000		\$ 150,000	Programming and naming sponsorships
CBP Event Usage Rental (3rd Party Events)	\$ 177,000		\$ 177,000	3rd Party event rentals
SUBTOTAL	\$ 380,000		\$ 380,000	
EXPENSES				
Programming + Permitting				

DRAFT Initial Operations Programming Budget - 2025 Split

Programming + Permitting + Day-Of Activation Staffing	\$ 400,000		\$ 400,000	2.35 FTE. Staff includes concessions coordination, sales outreach, marketing, administration, permitting, SF Port communications, event planning + programming, day-of event managers.
Programming Costs	\$ 67,500		\$ 67,500	Programming fees to support the execution of programming sponsorships (estimate, dependent on deal structure)
Programming Office + Supplies	\$ 5,000		\$ 5,000	Office, licenses
Sponsorship Commission	\$ 27,000		\$ 27,000	Commission to entity securing sponsorships (18%)
Marketing				
Marketing / Social Media Staff	\$ 38,667		\$ 38,667	0.35 FTE
Signage	\$ 5,000		\$ 5,000	General park signage
Website Maintenance	\$ 3,333		\$ 3,333	CBP site maintenance, ongoing calendar updates, event inquiry intake
SUBTOTAL	\$ 546,500	\$ -	\$ 546,500	
PROGRAMMING & SPONSORSHIPS NET	\$ (166,500)	\$ -	\$ (166,500)	
NET OPERATING DEFICIT WITH SPONSORSHIPS	\$ (322,304)	\$ (42,235)	\$ (364,539)	

MASTER ASSOCIATION ADDITIONAL EXPENSES

	2025 CBP	2025 Streets + Paseos	2025 Total	
EXPENSES				
Security / Ambassadors			\$ 150,509	6am-10pm daily roamer, spotter at night
TDM			\$ 50,000	
Administrative				
Administrator			\$ 54,002	Accounting, reporting, and contract management
Audit + Legal + Filing Fees			\$ 8,200	
Insurance				
Commercial General Liability			\$ 17,931	
Reporting				
LCC			\$ 2,500	
Marketing				



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 250189

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
wyatt Donnelly-Landolt	(415) 439-9610
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PRT PRT	wyatt.donnellylandolt@sfport.com

5. CONTRACTOR	
NAME OF CONTRACTOR New affiliate of Seawall Lot 337 Associates, LLC	TELEPHONE NUMBER (415) 972-2000
STREET ADDRESS (including City, State and Zip Code) 24 Willie Mays Plaza, San Francisco, CA 94107	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 250189
DESCRIPTION OF AMOUNT OF CONTRACT \$0		
NATURE OF THE CONTRACT (Please describe) Lease of China Basin Park for the purpose of management, operations, and programming; Contractor will be "A new affiliate of Seawall Lot 337 Associates, LLC, a Delaware limited liability company that is anticipated to be named "Mission Rock Commons, Inc."" (character limit did not allow full name)		

7. COMMENTS
This entity has not yet been legally formed but will be an affiliate of Seawall Lot 337 Associates, LLC (the Mission Rock Master Developer) and will have a Board of Directors appointed by Seawall Lot 337 Associates, LLC.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	To be appointed by Seawall	Lot 337 Associates	Board of Directors
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
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41			
42			
43			
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45			
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47			
48			
49			
50			

☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK

DATE SIGNED

BOS Clerk of the Board

OFFICE OF THE MAYOR
SAN FRANCISCO



DANIEL LURIE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Adam Thongsavat, Liaison to the Board of Supervisors
RE: [Mission Rock – Approving Port Park Lease and Loan, Management Agreement, and Utilities
Licenses and Absolving Services Agreement]
DATE: February 25, 2025

Ordinance approving and waiving competitive solicitation obligations for a Port Commission Park Lease and Loan for China Basin Park and for a Management Agreement for adjacent public and open spaces between the Port and an affiliate of Seawall Lot 337 Associates, LLC, Developer of the Mission Rock Project bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay ("Project"); approving a Port Commission License with Mission Rock Utilities, Inc., a private utility provider servicing the Project; and approving two Port Commission Licenses and an Absolving Services Agreement with Pacific Gas and Electric Company to facilitate gas service to private property in the Project area and electric power service to the Third Street Bridge Pilot House; and affirming the Planning Department's determination under the California Environmental Quality Act and its findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Should you have any questions, please contact Adam Thongsavat at adam.thongsavat@sfgov.org