

1 [Water Purchase Agreement - Mission Rock Utilities - Water Purchase for Port-Owned Parks
2 and Open Space at Mission Rock - Maximum Cost \$44,656,545]

3 **Resolution approving a Water Purchase Agreement between the Port Commission and**
4 **Mission Rock Utilities for purchase of water for Port-owned parks and open space at**
5 **Mission Rock, with a term of 30 years up to a maximum cost of \$44,656,545 effective**
6 **upon approval of this Resolution; and to authorize the Executive Director of the Port to**
7 **enter into amendments or modifications to the Agreement that do not materially**
8 **increase the obligations or liabilities to the City and are necessary to effectuate the**
9 **purposes of the Agreement or this Resolution.**

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11 WHEREAS, The Port Commission (“Port”) approved development by Seawall Lot
12 337 Associates, LLC (“Master Developer”), of a new mixed-use neighborhood within its
13 jurisdiction at and around seawall lot 337, known as Mission Rock (the “Mission Rock Project”
14 or “Project”); and

15 WHEREAS, The City of San Francisco and the Port Commission approved ambitious
16 sustainability, water conservation, and renewable energy goals for the Mission Rock Project
17 including obtaining water for non-potable uses from recycled sources; and

18 WHEREAS, The Port Commission approved Resolution No. 19-40 on September 24,
19 2019, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 221281,
20 which supported the formation of Mission Rock Utilities, Inc. (“MRU”), a Delaware non-stock
21 corporation that is currently building, and will operate, a centralized wastewater treatment and
22 recycled, non-potable water delivery system for the Project (the “Facility”), and encouraged
23 the MRU to work with Port staff towards the provision of recycled water services to the
24 Project; and

1 WHEREAS, MRU will serve all residential, commercial, and other users of water for
2 non-potable uses within the Project; and

3 WHEREAS, The Port aims to advance these environmental sustainability goals by
4 purchasing water provided by MRU for non-potable uses, such as irrigation and water closets
5 in Port-owned parks and open spaces, and the Port Commission approved Resolution No. 22-
6 54, which supported entering into a Water Purchase Agreement (“WPA”) substantially in the
7 form of agreement on file with the Clerk of the Board of Supervisors in File No. 221281; and

8 WHEREAS, Under the WPA, MRU will operate the Facility and associated functions on
9 a cost-based manner where the Port will pay only its share of actual costs incurred by MRU
10 based on recycled water capacity needs and actual water usage, subject to the “Annual Cap”
11 (as defined below), which is based on projected cost-based charges plus contingency
12 amounts; and

13 WHEREAS, The Annual Cap is the maximum charge the Port is liable for in any
14 calendar year for its obligations under the WPA; and

15 WHEREAS, The Annual Cap will not affect water delivery obligations by MRU under
16 the WPA and MRU is obligated to supply water to Port without charge for the period from and
17 after when the Annual Cap is met in any calendar year; and

18 WHEREAS, For the first year of the WPA (2023), the Annual Cap is \$672,145, which
19 will increase annually by the “Escalator” set forth in the Rate and Method of Apportionment of
20 Special Tax District 2020-1 (Mission Rock Facilities and Services); and

21 WHEREAS, The Port intends to assign its obligations under the WPA to an affiliate of
22 the Master Developer through a lease of the Port-owned parks and open space (“Parks
23 Lease”), before the WPA becomes effective, whereby such tenant will lease all Port-owned
24 parks and open spaces and assume all of Port’s obligations under the WPA; and
25

1 WHEREAS, If for any reasons the Port elects not to assign its obligations under the
2 WPA through a Parks Lease or if the Parks Lease terminates in the future, the Port will utilize
3 the Mission Rock Community Facilities District Contingent Special Services Tax as a
4 dedicated revenue source to pay for its obligations under the WPA and for the operation and
5 maintenance of the Port-owned parks and open spaces; and

6 WHEREAS, The Maximum Contingent Services Special Tax for the Project in Fiscal
7 Year (FY) 22-23 (assuming all phases of the Project are complete) is estimated to be
8 \$2,741,959 and the Maximum Contingent Services Special Tax for Phase 1 only is estimated
9 to be \$1,303,608, each amount is in excess of the Annual Cap; and

10 WHEREAS, The Port Commission approved Resolution No. 22-54 on November 8,
11 2022, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 221281,
12 approving the WPA, subject to Board approval; and

13 WHEREAS, The Office of Contract Administration of the City Administrator's Office
14 approved a sole-source justification to award this contract to MRU; now, therefore, be it

15 RESOLVED, That the Board of Supervisors approves the WPA substantially in the
16 form of agreement on file with the Clerk of the Board of Supervisors in File No. 221281 and as
17 described in this Resolution; and, be it

18 FURTHER RESOLVED; That the Board of Supervisors authorizes the Executive
19 Director of the Port ("Executive Director") to execute the WPA in a form approved by the City
20 Attorney and in substantially the form on file with the Clerk of the Board of Supervisors in File
21 No. 221281; and, be it

22 FURTHER RESOLVED, That the Port will pay for a Capacity Charge and Flow
23 Charges based on actual costs and water use, up to the Annual Cap, provided that the Port
24 has not assigned the obligations of the WPA to another entity; and, be it

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1 FURTHER RESOLVED, That if for any reason the Port has not assigned its obligations
2 under the WPA, the Port intends to utilize the Contingent Services Special Tax (through direct
3 payment or reimbursement) to fund the Port's obligations under the WPA and the operation
4 and maintenance of Port-owned parks and other open spaces in the Mission Rock Project;
5 and, be it

6 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
7 Director to enter into any additions, amendments or other modifications to the WPA (including,
8 without limitation, preparation and attachment of, or changes to, any or all of the exhibits and
9 ancillary agreements) that the Executive Director, in consultation with the City Attorney,
10 determines are in the best interest of the Port, do not materially increase the obligations or
11 liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and
12 are necessary or advisable to complete the transactions contemplated and effectuate the
13 purpose and intent of this Resolution, such determination to be conclusively evidenced by the
14 execution and delivery by the Executive Director of any such documents; and, be it

15 FURTHER RESOLVED; That within thirty (30) days of the WPA being fully executed by
16 all parties, the Port shall provide copies of the WPA to the Clerk of the Board for inclusion into
17 the official file.

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19 RECOMMENDED:

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21
22 /s/
23 Port of San Francisco
24 Executive Director
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