

File No. 221281

Committee Item No. 9

Board Item No. 14

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date February 1, 2023

Board of Supervisors Meeting Date February 7, 2023

### Cmte Board

- Motion
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- Ordinance
- Legislative Digest
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- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
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### OTHER (Use back side if additional space is needed)

- Port Commission Resolution Nos. 19-39 & 19-40 9/24/2019
- Port Comm Resolution No. 22-54 11/8/2022
- Port Presentation 2/1/2023
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Completed by: Brent Jalipa Date January 26, 2023

Completed by: Brent Jalipa Date \_\_\_\_\_

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.**

10  
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

25

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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/s/  
Port of San Francisco  
Executive Director

<p><b>Item 9</b> <b>File 22-1281</b></p>	<p><b>Department:</b> Port Commission</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve a water purchase agreement between the Port Commission and Mission Rock Utilities (MRU) for purchase of non-potable water for Port-owned parks and open space at Mission Rock, with a term of 30 years up to a maximum cost of \$44,656,545.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• MRU is a non-stock corporation established by the Master Developer and partners to provide wastewater treatment and non-potable water delivery services to the Mission Rock Development, to comply with the City’s Non-Potable Water Ordinance.</li> <li>• MRU issued bonds to cover construction costs of the wastewater facility, which will be repaid by MRU customers, including the Port and building owners, through capacity charges.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Port would be financially responsible for its share of actual costs based on capacity needs (capacity charge) and water usage (flow charge). The agreement also establishes maximum annual costs (the “Annual Cap”) based on projected cost-based charges plus a 10 percent contingency, which total \$44.7 million over the 30-year agreement.</li> <li>• The Port intends to assign its obligations under the water purchase agreement to an affiliate of the Master Developer through a lease of the Port-owned parks and open space. If the Port does not assign its water purchase agreement obligations to a tenant or the assignment of obligations to the tenant is terminated, the Port will utilize the Mission Rock Community Facilities District Contingent Special Services Tax to pay for its obligations.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The Port originally planned for the San Francisco Public Utilities Commission (PUC) to operate the facility and for the Port to use public financing to pay for construction of the plant. However, due to facility size, a non-profit entity (MRU) will now finance development and operate the facility. Other district-scale private developments subject to the City’s Non-Potable Water Ordinance requirements are run by a homeowners association; or, more commonly, each building subject to the Non-Potable Water Ordinance has its own water recycling system.</li> <li>• The initial flow charge base rate is more than three times the PUC rate for potable water.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

## BACKGROUND

In January 2018, the Port Commission approved a mixed-use development project at Seawall Lot 337 and Pier 48 of approximately 28-acres known as the “Mission Rock Project” (“Project”). The Project is bound by the San Francisco Bay, Mission Rock Street, Third Street, and the China Basin Channel.

In February 2018, the Board of Supervisors approved a Disposition and Development Agreement (DDA) between the Port and Seawall Lot 337 Associates, LLC (“Master Developer”), a joint venture consisting of the San Francisco Giants and Tishman Speyer (File 18-0092). The DDA requires the Master Developer to build horizontal and vertical improvements within the Mission Rock Project Area and the Port to reimburse the developer for certain infrastructure costs.

In December 2019, the Master Developer subleased certain aspects of Phase 1 of the DDA to the developer referred to as Mission Rock Horizontal Sub (Phase 1), LLC. Mission Rock Horizontal Sub (Phase 1) then engaged with Mission Rock Utilities (MRU), a non-stock corporation established by the Developer and partners to provide wastewater treatment and non-potable water delivery services to the Mission Rock Development.

### **Mission Rock Black Water Recycling System**

According to the Staff Memorandum to the Port Commission on November 4, 2022, a key element of the Project’s sustainability strategy is the production of a District-scale Black Water Recycling System (BWRS) to substantially decrease the use of potable water for non-potable water uses, such as irrigation and toilet flushing. The Black Water Recycling System also satisfies the Project’s obligations under the City’s Onsite Water Reuse for Commercial, Multi-family, and Mixed-Use Development Ordinance (Non-Potable Water Ordinance), which requires large development projects to construct an alternate water source system to reuse available non-potable water to meet on-site demands for toilet and urinal flushing as well as irrigation.

MRU is responsible for the finance, design, and construction of a centralized wastewater treatment and recycled, non-potable water delivery system in the Mission Rock Project Area. Construction of MRU’s BWRS facility began in June 2021, and recycled water operations are expected to fully commence in January 2024. MRU owns both the facility and the distribution system, and the Port owns the piping connecting the wastewater to the collection points.

MRU has entered into an agreement with Mission Rock Owners Association, Inc. (“Master Association”) whereby the Master Association obtains water for the development of commercial and residential buildings within the Mission Rock Project Area. MRU is responsible for serving all

residential, commercial, and other uses of water for non-potable uses within the Project. SFPUC is responsible for providing potable water. Therefore, Port staff and MRU have negotiated an agreement for the Port to purchase water from MRU’s BWRS for non-potable uses in Port-owned parks (e.g., China Basin Park) and other future public open spaces accepted by the Port. In November 2022, the Port Commission approved the agreement, subject to Board approval (Port Resolution No. 22-54), and the Office of Contract Administration of the City Administrator’s Office approved a sole-source justification to award this contract to MRU.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve a water purchase agreement between the Port Commission and Mission Rock Utilities (MRU) for purchase of non-potable water for Port-owned parks and open space at Mission Rock, with a term of 30 years up to a maximum cost of \$44,656,545. The agreement would initially apply to the “Initial Premises” area, which includes China Basin Park and other Port-owned open spaces in Phase 1. As the Port accepts other areas within the Mission Rock Development, the expansion areas would become subject to the agreement. The agreement would become effective upon the Port’s acceptance of Phase 1 of the Mission Rock open space, which is expected to be completed by the master developer in late 2023. After the initial 30-year term, the Port will have the option to extend the agreement.

MRU will operate the Black Water Recycling System (BWRS) that recycles non-potable water from lavatories, showers, baths, and urinals to all the buildings of the Mission Rock Development for irrigation, toilet flushing, and cooling tower makeup water. The BWRS would decrease the use of fresh/potable water for non-potable uses, which is consistent with the Port’s environmental sustainability goals and the City’s Non-Potable Water Ordinance. MRU must also comply with Article 12C of the San Francisco Health Code and San Francisco Department of Public Health regulations.

**Port’s Intent to Assign Agreement Obligations**

The Port intends to assign its obligations under the water purchase agreement to an affiliate of the Master Developer through a lease of the Port-owned parks and open space; therefore, the affiliate of the Master Developer (tenant) will assume all the Port’s obligations under the water purchase agreement.

According to the Port, this lease will be brought to the Port Commission and Board of Supervisors for approval later in 2023. The tenant will take over all obligations of the water purchase agreement for the term of the lease, releasing the Port of any obligations, including payment for recycled water and maintenance of wastewater pipping. Under the lease, the tenant will present an annual budget for park, open space, and recycled water operations to the Port Commission for approval. Additionally, the tenant will provide regular updates to the Port on key provisions of the obligations under the lease.

**Port’s Financial Responsibility Under Proposed Agreement**

Under the proposed agreement, the Port would be financially responsible for its share of actual costs based on capacity needs and water usage. The agreement also establishes maximum



annual costs (the “Annual Cap”) based on projected cost-based charges plus a 10 percent contingency. The Annual Cap for the initial year of the agreement is \$672,145, which will increase annually by up to five percent.<sup>1</sup> The proposed agreement states that in no event will the total annual charges or fees or any other obligation exceed the Annual Cap unless the affected parties secure appropriate contract amendments and approvals by the Port Commission and Board of Supervisors.

### Capacity & Water Flow Charges

The charges incurred by any BWRS customer are divided amongst two categories:

- The **Capacity Charge** is a fixed charge allocated towards the debt service or other financing costs associated with construction of the BWRS, as well as operating and maintenance costs, such as personnel costs, repair costs, and water testing costs. According to Mission Rock Utilities, the Port’s capacity charge in the Annual Cap reflects approximately 25 percent of total capacity charges for all MRU’s customers, who are not part of this agreement, based on estimated usage by the Port and other customers.
- The **Flow Charge**, an estimated \$33.12 per centum cubic feet, or “CCF” (one hundred cubic feet or 748 gallons), is based on the amount of water each customer uses. The rate is set at \$33.12 per CCF for service prior to January 1, 2023 and will increase by five percent annually. Flow charges include a portion of testing, treatment, and operating costs in order to bill customers based on actual water use.

### FISCAL IMPACT

Exhibit 1 below shows the maximum Port Annual Cap with a five percent annual increase of the non-potable water flow rate. The total capacity charge amount over the 30-year period is \$40,363,871, or approximately 90 percent of the total Port Annual Cap amount of \$44,656,545.

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<sup>1</sup> The five percent annual increase was established based on the “Escalator” set forth in the Rate and Method of Apportionment of the Special Tax District 2020-1.

**Exhibit 1: Port's Cap for Capacity and Flow Charges for Proposed Purchase Agreement**

<i>Year</i>	<i>Capacity Charge (\$)</i>	<i>Water Flow Charge (\$)</i>	<i>Port Annual Cap (\$)</i>
1	\$607,534	\$64,611	\$672,145
2	637,911	67,841	705,752
3	669,806	71,234	741,040
4	703,297	74,795	778,092
5	738,462	78,535	816,997
6	775,385	82,462	857,846
7	814,154	86,585	900,739
8	854,862	90,914	945,776
9	897,605	95,460	993,064
10	942,485	100,233	1,042,718
11	989,609	105,244	1,094,854
12	1,039,090	110,507	1,149,596
13	1,091,044	116,032	1,207,076
14	1,145,596	121,833	1,267,430
15	1,202,876	127,925	1,330,801
16	1,263,020	134,321	1,397,341
17	1,326,171	141,038	1,467,208
18	1,392,479	148,089	1,540,569
19	1,462,103	155,494	1,617,597
20	1,535,209	163,269	1,698,477
21	1,611,969	171,432	1,783,401
22	1,692,568	180,004	1,872,571
23	1,777,196	189,004	1,966,200
24	1,866,056	198,454	2,064,510
25	1,959,358	208,377	2,167,735
26	2,057,326	218,795	2,276,122
27	2,160,193	229,735	2,389,928
28	2,268,202	241,222	2,509,424
29	2,381,612	253,283	2,634,896
30	2,500,693	265,947	2,766,640
<b>Total</b>	<b>\$40,363,871</b>	<b>\$4,292,675</b>	<b>\$44,656,545</b>

Source: Exhibit A-2, Proposed Water Purchase Agreement

The water flow charge is based on an estimated 4,000 gallons of non-potable water used per day in Phase 1. According to the Port, the capacity charge estimates are based on in-place agreements, quotes, and estimates of the costs to construct and operate the BWRS provided by MRU. Final charges will be based upon actual costs to operate the facility and adjust accordingly, subject to the Port's Annual Cap. Exhibit 2 below shows the estimated annual budget for 2025.

**Exhibit 2: Blackwater Recycling System Budget (paid by all customers via capacity charges)**

<b>Annual Costs</b>	<b>Amount</b>	<b>Percent of Total</b>
Operation & Maintenance <sup>2</sup>	\$605,761	24.7%
General & Administrative <sup>3</sup>	510,247	20.8%
Utility Costs	95,020	3.9%
Working Capital <sup>4</sup>	202,343	8.2%
Debt Service	1,040,886	42.4%
<b>Total Annual Costs</b>	<b>\$2,454,257</b>	<b>100.0%</b>

Source: Port

**Debt Service**

The Port reports that total construction costs for the BWRS are estimated to be \$17 million and are fully debt-financed. The estimated annual budget for 2025 for the entire system will be approximately \$2.5 million, including approximately \$1.0 million for debt service.

In November 2020, MRU issued \$25 million of bonds to fund the initial construction of BWRS and a thermal District Energy System (DES).<sup>5</sup> In June 2022, MRU issued a second issuance of \$43.53 million of debt to repay the original shorter-term debt and fund the remaining costs of the system. The maturity date of the \$43.53 million debt is July 1, 2027, with a yield of approximately seven percent.

The Port also reports that the MRU was able to secure cost savings for the project through lower debt financing rates compared to if initial project costs were publicly financed. These bonds will be repaid by MRU customers, including the Port and building owners, through capacity charges.

**Projected Capacity Charges**

The capacity charges listed in this agreement are estimated costs and MRU does not have a detailed line-item budget for these charges, therefore we cannot assess their reasonableness or accuracy. If actual BWRS costs are more than currently estimated, the proposed agreement may have to be amended to increase the Annual Cap.

**Source of Funds**

As mentioned above, the Port intends to enter into a lease of the Port-owned parks and open space with an affiliate of the Master Developer (tenant) and assign its financial obligations under

<sup>2</sup> Operation & Maintenance Costs include the costs of energy, chemicals, required lab analysis and associated labor, membrane replacement, and sewer charges.

<sup>3</sup> General & Administrative Costs include the costs of insurance, the plant space lease, onsite engineering, and administrative costs to facilitate the system and customer billing.

<sup>4</sup> According to the Port, working capital is required in the first year to have sufficient funds available for timely payment of system expenses.

<sup>5</sup> DES is a separate project providing heating and cooling for each building in the Project Area.

the water purchase agreement to the tenant. In the event that the Port does not assign its water purchase agreement obligations to a tenant or the assignment of obligations to the tenant is terminated, the Port will utilize the Mission Rock Community Facilities District Contingent Special Services Tax to pay for its obligations and the operation and maintenance of the Port-owned parks and open spaces.

### **Port's Share of Costs Depends on the Number of Other Customers**

The Port anticipates that the proposed agreement's costs will decrease over time as the Mission Rock development proceeds and more buildings share the capital and operations costs of the BWRS, however the Port's Annual Cap does not assume this cost sharing. If subsequent project phases are delayed, there will be fewer users than projected sharing the costs and the Port's actual costs will be closer to the Annual Cap.

## **POLICY CONSIDERATION**

### **Operation of BWRS by a Private Entity**

When the project was approved, the Port anticipated that the San Francisco Public Utilities Commission (PUC) would operate the BWRS and that the Port would use public financing to pay for construction of the plant. According to the PUC's Policy and Government Affairs staff, the San Francisco Public Utilities Commission (PUC) anticipated owning and operating the Blackwater Treatment Facility if it was going to be sized to also serve Mission Bay, but the Mission Rock project proceeded with a district-level system, serving only the Mission Rock development area, due to timeline restrictions. Since the plant will only serve the Mission Rock development area, PUC will not operate the plant. In September 2019, PUC sent a letter to the Port stating that the sustainability, water conservation, and renewable energy goals for the Mission Rock Project could be met through the formation of a nonprofit entity. Other district-scale private developments subject to the City's Non-Potable Water Ordinance requirements are run by a homeowners association; or, more commonly, each building subject to the Non-Potable Water Ordinance has its own water recycling system.

### **Cost of Non-Potable Water**

As noted above, the BWRS is consistent with the requirements of Article 12C of the Health Code (Non-Potable Water Ordinance). However, the initial flow charge base rate for this agreement (\$33.12 per CCF) is more than three times the PUC rate for potable water, according to the Port's analysis. According to the Port, the blackwater flow charge expense is greater due to the costs related to treating and testing recycled water and to promote conservation.

## **RECOMMENDATION**

Approve the proposed resolution.



# MISSION ROCK RECYCLED WATER SERVICES AGREEMENT

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**Budget and Finance Committee**  
February 1, 2023

**Presented By:**  
Josh Keene  
Port of San Francisco





# Agenda

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- Mission Rock Project Overview
- Sustainability Strategy
- Mission Rock Utilities (MRU)
- Blackwater Treatment Process
- Agreement to Purchase Non-Potable Water
- Additional Considerations

*Picture as of January 2023*





# Mission Rock Overall Summary

- **Housing:** Up to 1,200 housing units, 40% Affordable
- **Office:** Up to 1.4M gross square feet (GSF)
- **Retail:** ~200K GSF
- **Pier 48 Rehabilitation:** ~212K GSF

## Updates

- **Phase 1:** Four buildings under construction; anticipate completion in 2024
- **Phase 2:** Phase submittal in progress

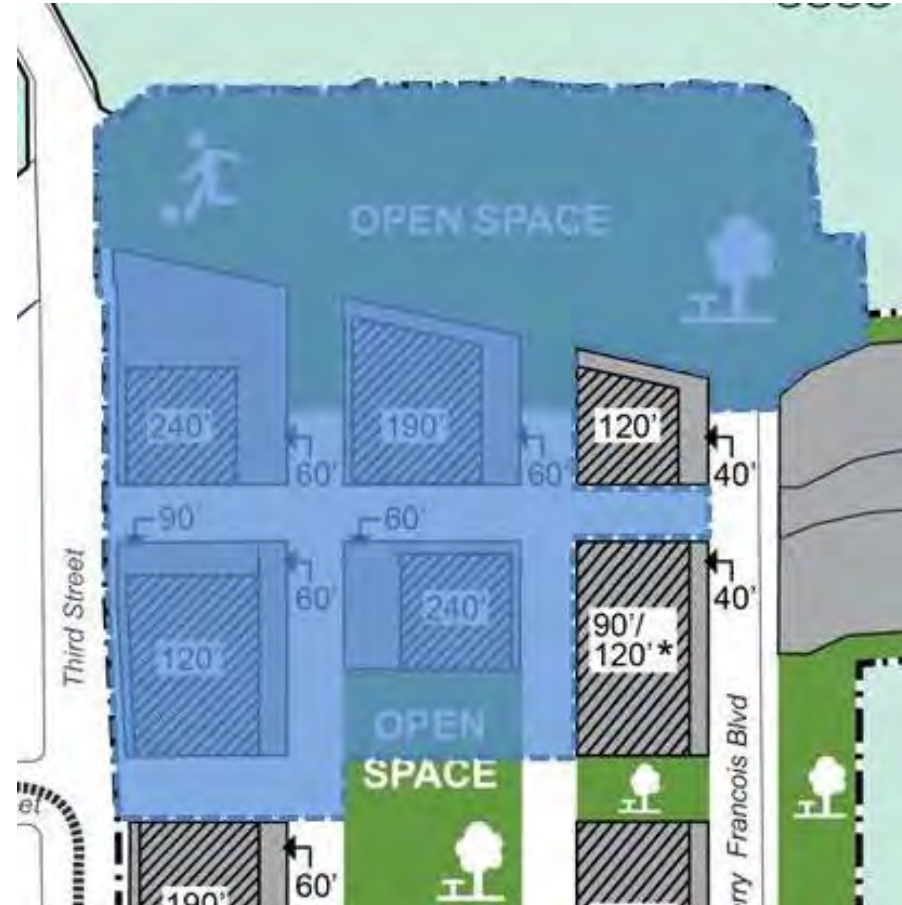


# Mission Rock Phase 1

- **Housing:** 2 buildings totaling 537 units total, 199 below market rate
- **Office:** 2 buildings totaling approximately 550,000 GSF
- **Ground Floor Retail:** ~52,000 GSF
- **China Basin Park:** 5 Acre Waterfront Park

## Updates

- **Horizontal:** Phase 1 ~75% complete
- **Vertical:**
  - TCO on Parcel G
  - Parcels A and B will receive TCO in Q2 2023 with first residents moving into A shortly thereafter
  - Parcel F will receive TCO in early 2024





# Sustainability Strategy



## Transportation

20 percent reduction in transportation-related carbon emissions



## Resilience

Raising site elevation 5 feet to meet 2100 projection for sea-level rise



## Water

100% of non-potable water demand met with non-potable sources



## Energy

100% of building energy met with renewable energy sources



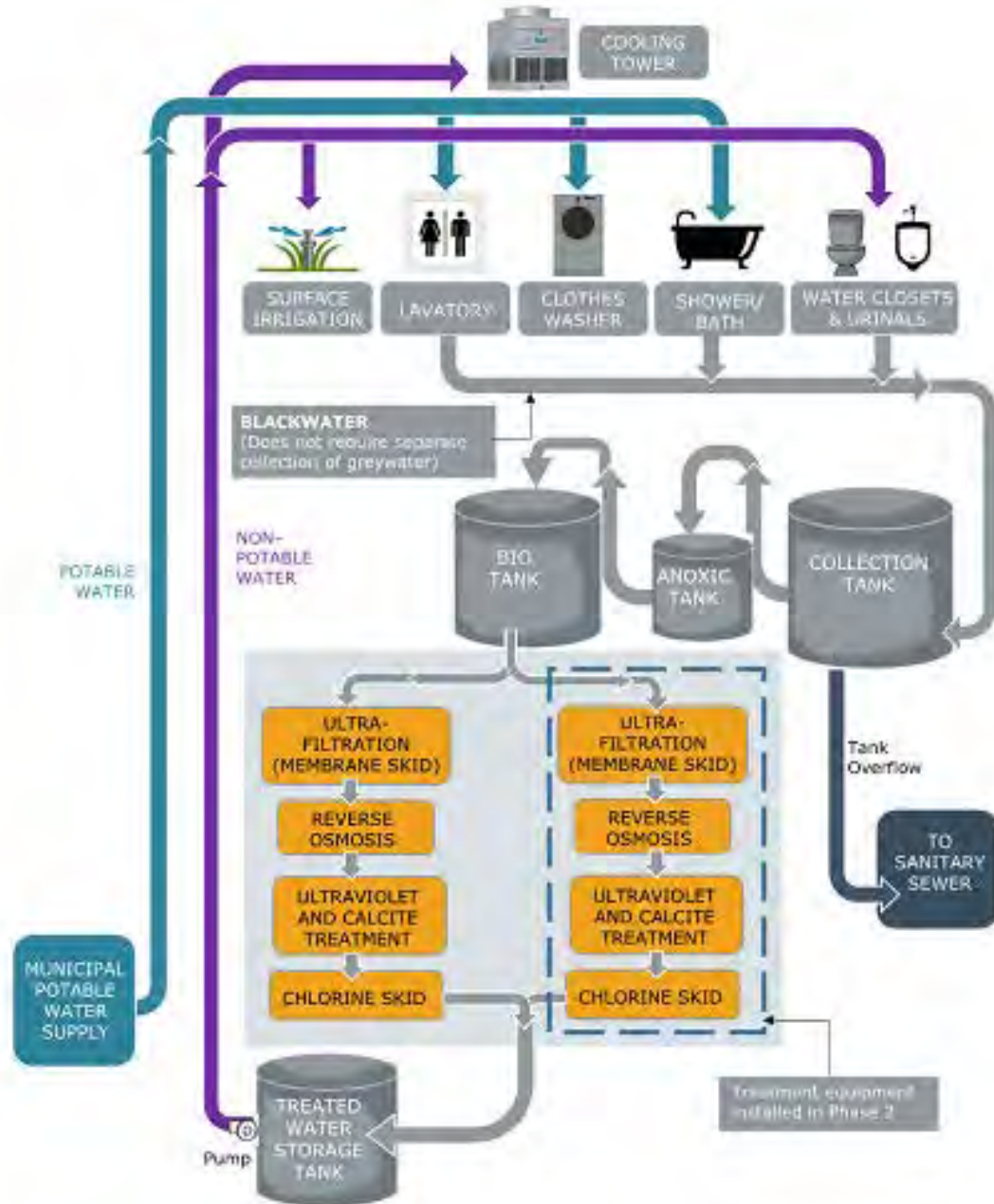
## LEED

Gold LEED rating for all Phase 1 buildings core and shell. LEED Gold Neighborhood achieved.

# Blackwater Treatment Process

1. Wastewater collected from Phase 1 buildings, flows through distribution piping in the streets to a series of tanks
2. Wastewater filtered through series of treatment processes.
3. Treated water distributed to buildings and open spaces for non-potable uses (non-drinking; e.g., irrigation, cooling tower water and toilets)

Note: PUC water, which serves potable uses in the project, can flow through the system prior to recycled water availability.





Blackwater Recycling  
System in Building B

# Mission Rock Utilities

- Mission Rock Utilities (“MRU”) is a non-stock corporation formed following the Port Commission adopting a resolution supporting its creation in September 2019
- SFPUC supported formation of MRU to fulfill sustainability strategy and City’s water goals
- Will construct, operate, and maintain the Blackwater Recycling System at Mission Rock
- Will also construct and manage the District Energy System

District Energy System  
In Building A





# Agreement to Purchase Non-Potable Water

- Port will purchase recycled water from MRU for non-potable uses at China Basin Park and other Port-owned public spaces
- Expected Port annual recycled water use:
  - Phase 1: 1.5 million gallons
  - Full Project: 1.9 million gallons
- Effective upon Port's acceptance of Phase 1 public open spaces. Prior to acceptance, Master Developer provides irrigation water.
- Initial term is 30 years to meet long-term sustainability goals and guarantee funding for bonds funding infrastructure

# Key Terms

- Cost to operate MRU is fully funded by payments from its customers (the Port + building owners)
- The Port and other customers will pay cost-based pricing (no profit earned by MRU)
- Amount due by the Port is subject to an Annual Cap (Cap in Year 1 is \$672,145) broken down into two charges
  - Capacity Charge – fixed charge for Port’s share of system capacity to fund fixed costs such as debt service on bonds, operations, water testing, etc. (estimated to be \$552,304 in first year)
  - Flow Charge – cost based on actual water usage, contributing to actual operating costs incurred (estimated to be \$64,611 in first year)
- Capacity charge for all customers is expected to decrease as Phases 2 and 3 are completed because more customers will share these (mostly) fixed costs



# Assignment to Parks Tenant

- The Port intends to assign this agreement to Mission Rock Commons through a lease for China Basin Park
- The assignment will release the Port of obligations of Recycled Water Services Agreement
- Mission Rock Commons will use Master Association dues and other revenues to fund the agreement
- Lease expected to come to the Port Commission and Board for approval later in 2023





# Contingent Special Services Tax

- The Port will utilize the Contingent Special Services Tax as needed to fulfill obligations of the water purchase agreement if the Lease is not in place at any time
- The Special Services Tax funds both the water agreement and parks and open space maintenance as to not encumber the Harbor Fund
- The maximum tax for the current fiscal year is \$1.30M for Phase 1 only and \$2.74M for the entire project (continuing to escalate annually)



# QUESTIONS???





## WATER PURCHASE AGREEMENT

This Water Purchase Agreement (“**Agreement**”) is made and entered into in San Francisco, California, as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Mission Rock Utilities, Inc., a Delaware non-stock corporation (“**MRU**”), and the City and County of San Francisco, a municipal corporation and charter city (“**City**”), acting by and through the San Francisco Port Commission (“**Port**”) (each a “**Party**” and together, the “**Parties**”), and provides as follows:

### RECITALS:

**A.** Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successor’s and assigns, “**Master Developer**”), and the Port, are parties to that certain Disposition and Development Agreement dated as of August 15, 2018 (the “**DDA**”) and that certain Lease No. L-16417 dated as of August 15, 2018 (the “**Master Lease**”). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as “Mission Rock” located in the City and County of San Francisco, State of California and as more particularly described in the DDA and Master Lease (the “**Project Site**”). Master Developer is responsible for the design and construction of the horizontal improvements (i.e., utilities, streets, parks, etc.) that will support the public’s use of and access to the waterfront and the public areas to be developed within the Project Site and the development of commercial and residential buildings within the Project Site.

**B.** Master Developer, (i) on December 18, 2019, assigned certain rights, title, and interest in and to the DDA with respect to Phase 1 to Mission Rock Horizontal Sub (Phase 1), L.L.C., a Delaware limited liability company (“**Phase 1 Horizontal Developer**”), all of which were assumed by Phase 1 Horizontal Developer, and (ii) effective December 19, 2019, subleased Phase 1 of the premises under the Master Lease to the Phase 1 Horizontal Developer.

**C.** MRU is a non-stock corporation formed under the laws of the State of Delaware, is qualified to transact business in the State of California and was established to provide wastewater treatment and non-potable water delivery services to the Mission Rock Development.

**D.** Phase 1 Horizontal Developer has engaged MRU to finance, design and construct a centralized wastewater treatment and recycled, non-potable water delivery system at the Project Site (the “**Facility**”), Service Piping (as defined below) and appurtenant infrastructure for the Facility. Upon completion, MRU intends to operate and maintain the Facility in accordance with the terms and conditions set forth herein.

**E.** It is a key policy goal of the Port to advance the sustainability goals set forth in the Sustainability Strategy and Article 12C of the San Francisco Health Code and to use non-potable water for use in, among other things, park surface irrigation purposes and for surface irrigation, water closets and urinals in connection with public open space maintenance. As used herein, the term “Recycled Water” shall mean “Non-potable Water” as defined in Article 12C of the San Francisco Health Code.

**F.** MRU has entered into an agreement (the “**Master Association RWSA**”) with Mission Rock Owners Association, Inc., a California mutual benefit corporation (the “**Master Association**”) for the Master Association to obtain water for the proposed development of commercial and residential buildings that are expected within the Mission Rock Development.

G. In order for MRU to furnish water to Port, the Parties now wish to enter into an agreement for the delivery of, and payment for, such services.

H. The Office of Contract Administration (“OCA”) provided a sole source determination on \_\_\_\_\_, 2022.

I. **NOW, THEREFORE**, in consideration of the mutual covenants, representations and warranties herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**AGREEMENT:**

**1. PREMISES; ASSIGNMENT AND RELEASE; TERM.**

A. This Agreement shall initially apply to the area [described/depicted] on *Schedule 1* (the “**Initial Premises**”). As the Port accepts other areas within the Mission Rock Development or assumes maintenance responsibilities therefor, such areas (the “**Expansion Areas**”) shall become subject to this Agreement and the Parties shall amend this Agreement to update *Schedule 1* to include such applicable Expansion Areas. The Initial Premises as such area may be expanded from time to time by the Expansion Areas shall be referred to herein as the “**Premises.**”

B. The Parties acknowledge that the Port intends to enter into a lease with Mission Rock Commons LLC (together with any other entity that is an affiliate of the Developer, Tishman Speyer or the San Francisco Giants, and which either (i) has access to assessments or dues collected by the Master Association, or (ii) if such affiliate does not have access to such assessments or dues, is approved by MRU, such approval not to be withheld so long as such affiliate has adequate financial resources to satisfy Port’s obligations under this Agreement, each a “**Park MRC Tenant**”), for certain portions of the Premises commonly known as China Basin Park (such lease, or any other lease or management agreement for the entirety of China Basin Park, a “**Park Lease**”). Port has the right to assign all of Port’s obligations under this Agreement to (i) the Park MRC Tenant concurrently with the execution of the Park Lease, or (ii) if Port enters into a Park Lease with another entity, such other entity (“**Other Park Tenant**”). Port’s assignment of its obligations under this Agreement may be set forth in the Park Lease and MRU consents to such assignment without the need for any additional documents.

C. For so long as the Park Lease with the Park MRC Tenant is in effect and the Park MRC Tenant has assumed all of the Port’s responsibilities under this Agreement, the Port shall be released from all obligations hereunder. If a Park MRC Tenant is no longer the tenant under the Park Lease, then for so long as the Park Lease with the Other Park Tenant is in effect, and the Other Park Tenant has assumed and is performing all of the Port’s responsibilities under this Agreement, the Port shall be released from all obligations hereunder. MRU will concurrently send Port notices of any default of this Agreement by the Park MRC Tenant and the Other Park Tenant, as applicable. Upon termination of a Park Lease with a Park MRC Tenant, the Port’s liability for all obligations hereunder arising from and after such termination shall be automatically reinstated until Port enters into another Park Lease with another entity, in which event, so long as all of Port’s obligations are assigned to such tenant or manager (i) that is a Park MRC Tenant, Port will again be released of all its obligations hereunder during the period such agreement is effective, or (ii) that is not a Park MRC Tenant, for so long as such entity is also performing the obligations under this Agreement, Port will again be released of all its obligations hereunder during the period such agreement is effective. Upon termination of a Park Lease with

an Other Park Tenant, the Port's liability for all obligations hereunder during the term of, and from and after the termination of, such Park Lease shall be automatically reinstated until Port enters into another Park Lease with another entity, in which event, so long as all of Port's obligations are assigned to such tenant or manager (i) that is a Park MRC Tenant, Port will again be released of all its obligations hereunder during the period such agreement is effective, or (ii) that is not a Park MRC Tenant, for so long as such entity is also performing the obligations under this Agreement, Port will again be released of all its obligations hereunder during the period such agreement is effective.

**D.** This Agreement is effective on the Effective Date and will remain in effect until the thirtieth (30th) anniversary of the Effective Date (the "**Initial Term**") unless earlier terminated pursuant to the terms of this Agreement. The "**Effective Date**" means the latest to occur of (i) the First Service Date, (ii) the date this Agreement is fully executed by the Parties, and (iii) the date the Port has accepted the Initial Premises. The "**First Service Date**" means the date on which the Facility achieves commercial operation and is capable of delivering Recycled Water Services at the Delivery Points. Subject to earlier termination in accordance with the provisions of this Agreement, so long as the Guaranteed Maximum Costs have not been exceeded, upon expiration of the Initial Term, the term of this Agreement will be renewed at Port's option in its sole discretion, subject to MRU's consent. Port will deliver its written notice of renewal at least thirty days prior to the then expiration date and also include in such notice, the term of the renewal period. MRU may elect to disapprove any Port exercise of its option to renew, in which event, this Agreement will terminate at the end of the then applicable term of this Agreement. If at any time, the Master Association terminates the Master Association RWSA, MRU shall promptly notify Port of the same in writing and, irrespective of whether MRU has provided Port with notice of the Master Association terminating the Master Association RWSA, unless the Master Association purchases the Facility upon such termination and assumes all of MRU's obligations under this Agreement, this Agreement will terminate on the effective termination date of the Master Association RWSA unless otherwise provided by Port in writing. If the Master Association purchases the Facility and assumes all of MRU's obligations under this Agreement, then Port will have no right to terminate this Agreement based solely on the termination of the Master Association RWSA.

**E.** Without limiting (x) the Port's termination right if the Master Association RWSA is terminated (except in connection with the Master Association's election to purchase the Facility and assumption of all of MRU's obligations under this Agreement) or (y) a Party's rights to terminate this Agreement following an Event of Default pursuant to Section 11.2, this Agreement may be terminated (i) by mutual written consent of each Party, or (ii) by MRU at any time prior to the First Service Date. A Party terminating this Agreement pursuant to this Section 1.D shall give written notice of that termination to the other Party. If this Agreement is terminated by a Party pursuant to this Section 1.E, each Party shall be released from all obligations hereunder, except with respect to the obligations of the Parties which expressly survive the termination of this Agreement.

## **2. PURCHASE PRICE; FINANCIAL MATTERS; GUARANTEED MAXIMUM COSTS; PORT ANNUAL CAP; PAYMENT; BOOKS AND RECORDS.**

**A.** The cost of water shall be determined as set forth in *Exhibit A* ("**Water Costs**"), which is attached to and incorporated by reference in this Agreement, and defines the purchase price from the Effective Date through the end of the contract term.

**B. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of Port's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to Port at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. Port has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Port budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. MRU's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. For the avoidance of doubt, MRU shall have no obligation to deliver services to the Port under this Agreement if the Port does not have funds available to pay for such services in accordance with the terms of this Agreement for any reason. THIS SECTION 2.B CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**C. Guaranteed Maximum Costs; Port Annual Cap.** The Port's payment obligation to MRU cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification nor can it exceed in any given calendar year, the Port Annual Cap described in *Exhibit A*. Absent an authorized Emergency per the City Charter or applicable Code, no City or Port representative is authorized to offer or promise, nor is the City or Port required to honor, any offered or promised payments to MRU under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount. Additionally, in no event will the amount certified by the City's Controller exceed \$44,656,545 for the total term ("**Guaranteed Maximum Costs**").

**D.** Subject to the provisions of this Section 2.D and Sections 2.E and 2.F, Port will be billed monthly (the "**Billing Period**"), and payment will be due and payable within thirty (30) days of the date of the invoice. MRU shall serve as the third-party billing agent and customer of record for any applicable SFPUC water and/or sewer charges. If the Park Lease with the Park MRC Tenant is not effective as of the Effective Date, with respect to Port only (as opposed to any assignee or transferee of Port's rights under this Agreement), Port has no obligation to pay any amounts owed under this Agreement unless Port timely receives from the Master Developer, an amount equal to all the Contingent Services Special Taxes that would be due and payable through December of the fiscal year immediately following the Effective Date (the "**Transition Fee**"); provided that the Transition Fee may be paid by the Master Developer as and to the extent amounts are due from the Port under this Agreement. If Port does not receive in full the Transition Fee, if applicable, then Port will pay amounts owed under this Agreement in accordance with Sections 2.E and 2.F only after the Contingent Services Special Taxes due and payable have been paid.

**E.** Without limiting Section 2.D, Port's obligation to pay MRU under this Agreement will be further reduced by and to the extent each holder of a "**Leasehold Interest**" in a "**Taxable Parcel**" fails to timely pay in full the applicable Contingent Services Special Taxes that are then due and payable as follows: the Port's obligation to pay MRU under this Agreement shall be reduced by the same percentage as the percentage of Contingent Services Special Taxes that have not been timely paid. For example, if ten percent (10%) of the Contingent Services Special Taxes have not been timely paid for a specific period of time, the Port's obligation to pay MRU under this Agreement for that period of time shall be reduced by ten percent (10%).

F. The Port will not be liable for any late fees or any other charges or assessments of any type that may have been charged or accrued as a result of the failure of holder of a Leasehold Interest in a Taxable Parcel to pay such levied amounts when due and payable.

“**Mission Rock CFD**” means the City and County of San Francisco Special Tax District No. 2020-1 (Mission Rock Facilities and Services). “**Contingent Services Special Taxes**,” “**Leasehold Interest**,” “**Taxable Parcel**,” and “**Administrator**” are each defined in the RMA. “**RMA**” means that certain Rate and Method of Apportionment attached as Exhibit B to Resolution 160-20, the resolution of formation of the Mission Rock CFD, adopted by the Board of Supervisors on April 14, 2020, file no. 200120.

MRU will bill the Park MRC Tenant or Other Park Tenant, as applicable, for all payments due under this Agreement during the effective period of the Park Lease. MRU will bill Port for amounts due under this Agreement when there is no Park Lease. Except as set forth in the immediately following paragraph for the Port, any amounts owing pursuant to the terms of this Agreement and not paid when due shall incur a penalty equal to the amount of the five percent (5%) of the amount then due, plus all of said amounts then bearing interest at a percentage rate of one and one-half percent (1.5%) percent per month or the highest rate permitted by law, whichever is less, until all amounts due hereunder are paid in full. Payment of such interest is not the non-defaulting party’s sole remedy for the failure of the defaulting party to make timely payments under this Agreement.

To account for additional time needed for payment during the City’s fiscal year transition, with respect to Port only, Port will not be subject to any penalties for late payment of any amounts due in July of each year unless such amount is not paid in full by August 31 of that year. Subject to the immediately foregoing sentence, if MRU incurs any late fees, interest or penalty due to Port’s failure to pay when due amounts owed by Port under this Agreement, then Port will be subject to a penalty equal to the lesser of (i) Port’s share of such late fee, interest or penalty incurred by MRU or (ii) five percent (5%) of the then outstanding amount due by Port. If Port’s failure to pay continues for an additional ninety (90) days or beyond, then Port will be subject to an additional penalty equal to the lesser of (x) Port’s share of such late fee, interest or penalty incurred by MRU or (y) five percent (5%) of the total outstanding amount due by Port on each such subsequent 90th day until all amounts due by Port under this Agreement are paid in full.

Port will not be liable for any amount due under this Agreement that accrues while the Park Lease with the Park MRC Tenant is in effect, including but not limited to any NPWCC charges, NPWFC charges, late fees, penalty or interest, or any amounts owed by the Park MRC Tenant that remain outstanding after termination of the Park Lease.

G. The compensation paid by Port to MRU pursuant to this Section 2 does not include reimbursement for, and Port shall be solely liable for and shall pay, cause to be paid, or reimburse MRU promptly upon demand for the Port’s pro rata share if MRU is required to pay any and all taxes (including sales taxes, as applicable) other than transfer taxes and income taxes relating to or arising out of the delivery, sale or consumption of the water for non-potable uses to and by Port in accordance of this Agreement. As used herein, “**Wastewater**” means water and waste generated from Port’s lavatories, water closets, urinals, and similar fixtures located on the Premises that is delivered to the Facility at the Wastewater Collection Point. As between Port and MRU, Port shall also be liable for any net income taxes imposed upon Port with respect to the transactions contemplated hereunder. MRU shall be liable for and shall pay, cause to be paid, or reimburse Port if Port is required to pay, any and all taxes imposed on or with respect to the Facility or any other tangible property owned by MRU. As between MRU and Port, MRU shall also be liable for any transfer taxes or net income taxes imposed upon MRU with respect to the transactions contemplated hereunder. MRU shall indemnify, defend and hold harmless Port and

its directors, officers, employees, representatives or agents (“**Customer Parties**”) from and with respect to liability for any such taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from any taxes.

**H. Audit and Inspection of Records.** Upon Port’s request, MRU agrees to make available to Port, during regular business hours, existing books and accounting records relating to its services under this Agreement. MRU will permit Port to examine and make excerpts and transcripts from such books and records, and to the extent required by law, to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. MRU shall maintain such records for a period of not less than three years after such records are created. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon Port by this Section. MRU shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**I. Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City and Port for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City or Port if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City or Port a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City or Port ; (c) conspires to defraud the City or Port by getting a false claim allowed or paid by the City or Port; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City or Port; or (e) is a beneficiary of an inadvertent submission of a false claim to the City or Port, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City or Port within a reasonable time after discovery of the false claim.

### **3. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AND ORDERS; COMPLIANCE WITH REQUIREMENTS OF MRU.**

**A.** MRU must comply with all provisions of Article 12C of the San Francisco Health Code and accompanying regulations adopted by the San Francisco Department of Public Health, any applicable permit conditions and Legal Requirements. Port agrees that it will use water received from MRU consistent with San Francisco Health Code Article 12 (“**Permitted Non-Potable Water Uses**”). MRU shall engage employees or contractors which are qualified to perform the Recycled Water Services as described in this Agreement. “**Legal Requirements**” means (i) with respect to any governmental authority, any applicable federal, state or local constitutional provision, law, code, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority, (ii) the terms and conditions of any Governmental Approvals and (iii) the Facility Land Agreements, Declaration, DDA, Master Lease, Member Ground Leases, vertical development agreements entered into by the Members with the Port and any other

agreements required or contemplated by such agreements. **“Governmental Approvals”** means any necessary and required federal, state, or local permits, authorizations, approvals, implementation plans, and consents required for the Facility and the provision of the Recycled Water Services under this Agreement. **“Facility Land Agreement”** or **“Facility Land Agreements”** means each agreement or collectively, the agreements in effect from time to time granting subleaseholds, easements, licenses, access and/or similar rights to the land that is necessary to construct, operate and maintain the Facility, Service Piping, and appurtenant infrastructure, to be executed by and between MRU and the applicable Members, Master Developer and/or the Port in a form and with content that is mutually acceptable to such parties, including without limitation the MRU Lease and the Master Encroachment Permit. **“Declaration”** means that certain Mission Rock Master Declaration of Restrictions dated June 25, 2020 and recorded in the real property records of the County of San Francisco on June 25, 2020 as Instrument No. 2020-K944344, as may be amended, restated, modified or supplemented and in effect from time to time. **“Member Ground Lease”** means the lease between the Port, as landlord, and the applicable Member, as tenant, for a particular Building Lot within the Mission Rock Development (which is referred to in the DDA as a **“Parcel Lease”**), as may be amended, restated, modified or supplemented and in effect from time to time. **“Members”** means the Owners (as defined in the Declaration) of the Buildings Lots (as defined in the Declaration) within the Mission Rock Development. **“MRU Lease”** means the Lease entered into by MRU and Mission Rock Parcel B Owner, L.L.C., an affiliate of Master Developer and Phase 1 Horizontal Developer, for space within the Building Lot shown as Lot 2 on the Phase 1 Map to install and operate the Plant, as such lease, as executed and as it may be amended, restated, modified, or supplemented and in effect from time to time. **“Plant”** means a centralized wastewater treatment and recycled, non-potable water delivery system on the Building Lot shown as Lot 2 on the Phase 1 Map. **“Phase 1 Map”** means Final Map 9443 filed for record on June 12, 2020 in Book 1 of Final Maps, Pages 28-38 inclusive, Official Records of the City and County of San Francisco.

**B.** Water purchased by Port shall be for the use of (i) Port, (ii) the Park MRC Tenant or Other Park Tenant, as applicable, or (iii) a third party selected by Port so long as the Port’s transfer of water to such third party does not trigger any legal or regulatory violations and the total water purchased by Port for all such parties does not exceed the Port’s Contract Capacity (as defined in Exhibit A).

**C.** Prior to the date the Port has accepted the Initial Premises, the Master Developer, Phase I Horizontal Developer or the various vertical developers, as applicable, have control of the Premises. Accordingly, Port does not have the right to install any equipment within the Premises without the prior written consent of the Master Developer. From and after the date the Port has accepted the Initial Premises, Port shall not install equipment within the Premises that will materially and adversely impact the Facility without the prior written consent of MRU, which consent will not be unreasonably withheld. In no event will installation of equipment within the Premises by the Master Developer, its affiliates or any vertical developer within the Premises be deemed or considered a Port installation of equipment.

**D.** Port acknowledges that MRU’s production of water for non-potable uses could be subject to changes in federal law, state law, the San Francisco Municipal Code, and all associated regulations and requirements, and that these changes may conflict with the terms of this Agreement. In the event of a conflict between this Agreement and applicable Legal

Requirements, Port agrees to consider reasonable modification of this Agreement to comply with applicable Legal Requirements.

E. Port shall not directly, or through its contractors performing work on behalf of the Port (expressly excluding work performed by or on behalf of Master Developer, any phase horizontal developer, any vertical developer, or any of their respective affiliates, agents, and subtenants), use equipment in such a manner as to adversely affect the Facility or non-potable water services to others. Port shall use commercially reasonable efforts to prevent the delivery of Wastewater to the Wastewater Collection Point that contains Abnormal Substances. Commercially reasonable efforts to prevent the delivery of Abnormal Substances to the Wastewater Collection Point may include posting of signs prohibiting dropping foreign substances into toilets located on the Premises. As used herein, “**Abnormal Substances**” means substances or materials (including viscous, toxic or hazardous substances) that (i) were not reasonably anticipated by MRU as being in the Wastewater, (ii) are present in the Wastewater in a type, concentration or loading that was not reasonably anticipated by MRU; or (iii) exceed the design capacity of the Facility to adequately treat when operated in accordance with Article 12C of the San Francisco Health Code.

F. Once the Facility is operational (including MRU obtaining all regulatory approvals necessary to commence operations) and the toilets within the Premises are open for use by the general public, MRU will extract at the Wastewater Collection Point, Wastewater from toilets within the Premises on a daily basis.

#### **4. DELIVERY AND AVAILABILITY OF WATER FOR NON-POTABLE USES; INTERRUPTION OF SERVICE.**

A. Subject to Force Majeure, during the term of this Agreement, MRU (i) will operate and maintain the Facility in compliance with the Project Scope, Good Operating Practice and all Legal Requirements, and (ii) shall use commercially reasonable efforts to deliver Recycled Water to Port, not to exceed Port’s Contract Capacity. “**Good Operating Practice**” shall mean the practices, methods, and acts engaged in or approved by a significant portion of the recycled water services industry during the relevant time period, or the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, and the requirements of governmental authorities having jurisdiction; such term is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods or acts, including prudent industry practices. At full completion of the Mission Rock project, MRU will deliver up to 8,800 gallons of water for non-potable uses per day to Port. Before full completion, MRU will deliver water for non-potable uses up to the amounts set forth for each particular phase of the Mission Rock project as set forth on *Exhibit A*. Port agrees that, during the term of this Agreement, it shall purchase water for non-potable uses for the Premises from MRU, except to the extent that MRU does not supply such water in violation of this Agreement. If the Port’s supply of water generated from the treatment of wastewater by the Facility (“**Recycled Water**” or “**non-potable water**”) is interrupted, then during the time such water is unavailable, MRU will provide Port with San Francisco Public Utility Commission (“**SFPUC**”) water to the Premises at the same rate set forth on Exhibit A, but in no event will the cost of SFPUC water and Recycled Water purchased by Port exceed the amount certified by the Controller for such applicable period. If Port’s supply of both Recycled Water and SFPUC water is interrupted, then MRU will promptly notify Port of such interruption. The notice will include the start date of such interruption, the meter reading when such the interruption started, and the date delivery of



Recycled Water and/or SFPUC water is available, or if unknown, the estimated date of when it would become available. MRU will send another notice to Port when delivery of Recycled Water and/or SFPUC water becomes available, including the date and meter reading when it became available.

**B.** Port will accept delivery of water for non-potable uses at one or more “**Delivery Points**” (as defined below), each as engineered, designed, and constructed in accordance with the design and equipment parameters set forth in *Exhibit B* (“**Project Scope**”). The water for non-potable uses must be delivered to the Delivery Points by MRU. “**Delivery Point(s)**” means, as the context requires, the Delivery Point or the Wastewater Collection Point. “**Non-Potable Water Delivery Point**” means the physical points at which non-potable water is delivered, made available, provided and measured (as applicable) pursuant to the provisions of this Agreement, as depicted on *Exhibit C* (as may be updated by the parties from time to time). “**Wastewater Collection Point**” means the physical points at which Wastewater is collected and measured (as applicable) pursuant to the provisions of this Agreement, as depicted on *Exhibit D* (as may be updated by the parties from time to time).

**C.** Both parties acknowledge that MRU’s supply and delivery of water for non-potable uses and Port’s ability to accept delivery of water for non-potable uses may occasionally be interrupted or curtailed due to “**Force Majeure**” (as defined below). Each party will not be liable to the other for damages, including any consequential damages, arising out of interruption or curtailment of delivery or acceptance of service for these reasons; provided, however, the foregoing limitation will only apply to MRU to the extent MRU does not use commercially reasonable efforts to provide SFPUC water to Port during such period of Force Majeure that interrupts delivery of Recycled Water. Insofar as feasible, the party whose performance hereunder is affected by such condition must give the other party at least 72 hours advance notice of a temporary discontinuance or reduction in its delivery (in the case of MRU) or in its acceptance (in the case of Port) of water for non-potable uses, except in the case of emergency, in which case notice must be delivered as promptly as reasonably practicable. MRU shall undertake industry-standard, commercially reasonable efforts to perform scheduled maintenance that may include interruptions to Port’s supply of water for non-potable uses. MRU shall not be required to sell or make available to Port any non-potable water during such scheduled maintenance outages, provided, however, MRU will provide Port SFPUC water during such maintenance outages at the same rates set forth on Exhibit A. Upon notice of reduction of delivery of water in accordance with this subsection, MRU agrees that any decreases in delivery of water for non-potable uses will impact Port and any other customer in a manner proportionate to each customer’s historical water usage for non-potable uses over the 24 months immediately prior to the notice of reduction.

**D.** Notwithstanding any other provision of this Agreement, but subject to Article 11 of this Agreement, without increasing the Port’s Contract Capacity, MRU will continue to provide water to Port in any given calendar year without any charge if the Port Annual Cap is met in such calendar year.

## **5. SERVICE INSTALLATION.**

**5.1. Responsibility for Infrastructure Maintenance.** MRU shall be solely responsible for maintenance, and, as necessary, replacement and renewal of equipment and other materials owned by MRU, including all MRU-owned Service Piping. Port shall be solely responsible for

the maintenance and, as necessary, replacement and renewal of all of the equipment and other materials owned by Port after acceptance by the Port Commission of such equipment, including all Port-owned Service Piping. As used herein, “**Service Piping**” means the piping used to collect Wastewater and deliver water for non-potable uses that connects the Facility to (a) the inlet flange at the Wastewater Collection Point to receive Wastewater, and (b) the outlet flange at the Delivery Points to deliver non-potable water.

**5.2. No Real Property Interested Granted to MRU Under this Agreement.** This Agreement does not grant MRU any real property interest in the Premises or right to use the Premises for the installation, operation or maintenance of the Service Piping. MRU will need to enter into a separate Port form license or other form of agreement that grants MRU rights to install, operate and maintain its Service Piping, which license or agreement will be effective no earlier than Port’s acceptance of the Premises and which Port staff intends to seek Port Commission approval (which approval may be granted or denied at the Port Commission’s sole discretion) for a no fee license agreement (the “**Service Piping License**”). The Service Piping License will include a provision that will require MRU to remove or relocate without expense to Port or City any Service Piping covered by the Service Piping 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 by Port or City as applicable; provided, however, that MRU shall not be responsible for any costs or expenses which are approved by the Port Commission as Horizontal Development Costs through a Phase budget approval or other agreement authorized by the Port Commission.

**5.3. Port Infrastructure.** MRU’s interconnection requirements, including maximum pressure, flow, temperature, water quality and other data related to the delivery of water for non-potable uses, are set forth in *Exhibit G*. Provided Master Developer and Phase 1 Horizontal Developer have built all equipment within the Premises meeting MRU’s requirements at the time Port accepts the horizontal improvements in all of the Premises, from and after Port acceptance of the horizontal improvements within all of the Premises, Port shall be responsible for ensuring that the Port’s piping and other equipment and materials conform to such interconnection requirements. MRU will not change the interconnection requirements without first providing Port and other customers notice of its intent to change such requirements and a reasonable opportunity for Port and the other customers to comment on the proposed changes. In no event will Port be required to replace or change any of Port’s then existing piping or other equipment and materials due solely to MRU’s adoption of any change to the interconnection requirements.

**5.4. Location of Service Piping and Meter.** The location of the Service Piping and meters are set forth in *Exhibits C, D, E and F*. The Port and MRU shall reasonably cooperate to update such Exhibits as necessary from time to time. It is Port’s responsibility to provide and maintain unobstructed access to the meters for MRU.

**5.5. Safety and Operability Devices; Access and Notice Obligations.** Except in cases of emergency, MRU shall provide Port with reasonable notice of required access through the Premises so that MRU may access the MRU side of the Wastewater Collection Point and Delivery Points for the maintenance and replacement of MRU-owned cutoff valves and other operational equipment, and Port shall provide such access, subject to satisfaction of all of the following conditions: (i) the notice will include the period of required access; (ii) MRU will use

commercially reasonable efforts to minimize any interference to Port's tenants and other users of the Premises; (iii) MRU will use commercially reasonable efforts to minimize the area within the Premises that is blocked off to the public during of the period of maintenance and replacement; (iv) MRU promptly repairs any portion the Premises damaged by MRU's work to the condition it was in immediately prior to MRU's work.

## **6. RISK OF LOSS.**

Port will be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of non-potable water at and after the metered Delivery Point(s). MRU will be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of non-potable water prior to the metered Delivery Point(s). Risk of loss and liability related to non-potable water shall transfer from MRU to Port at the Non-Potable Water Delivery Points. Port shall be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of Wastewater prior to and at the Wastewater Collection Point. For the purposes of this Agreement only, MRU shall be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of Wastewater at and after the Wastewater Collection Point. Risk of loss and liability related to Wastewater shall transfer from Port to MRU at the Wastewater Collection Point.

## **7. MEASUREMENT OF DELIVERED NON-POTABLE WATER.**

**7.1.** All non-potable water delivered pursuant to this Agreement will be measured by the meters at the Delivery Points. MRU will own, operate, inspect, maintain, repair and replace the measuring equipment so they are in good working condition and able to accurately measure the quantities of delivered water as determined by applicable industry standards. Subject only to the following sub-Sections of this Section 7, the meters shall be used to determine conclusively the amount of non-potable water delivered by MRU at the Delivery Points.

**7.2.** Any meter used for billing purposes installed pursuant to this Agreement shall be tested regularly by MRU in accordance with the manufacturer's recommendations and Article 12C of the San Francisco Health Code. In addition, at MRU's expense, MRU will test or, if requested, will provide an independent, certified calibration and operational check of any such meter at commercially reasonable intervals. If a meter is found to violate tolerances set by equipment manufacturers' specifications or to be otherwise defective, it shall be promptly repaired or replaced. Port shall be afforded an opportunity to have its representative present during all testing.

**7.3.** If any test of a meter discloses inaccuracy in excess of the equipment manufacturer's specifications, payments shall be adjusted for: (a) the actual period during which inaccurate measurements were made, if the period can be determined; or (b) if the period of inaccurate measurements cannot be determined, then the period from the date of the latest test until the elapsed period in the month during which the test was made.

**7.4.** Should a meter at any time fail to register or should the registration thereof be so erratic as to be unreliable, the charges for water shall be based on the Port's historical water usage for non-potable uses over the 24 months immediately prior to such failure.

## 8. NONTRANSFERABLE; PROJECT FINANCING.

A. Except for an assignment in accordance with Section 1.B, Port's rights to non-potable water deliveries under this Agreement are not transferable or assignable, without the prior written approval of MRU, which approval may be withheld in MRU's sole and absolute discretion.

B. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by MRU, or, where MRU is a joint venture, a joint venture partner (collectively referred to as an "Assignment") unless first approved by Port by written instrument executed and approved in the same manner as this Agreement, except that: (i) this Agreement may be collaterally assigned in whole by MRU to any entity or entities providing debt financing or refinancing to MRU or any affiliate of MRU under the Financing Documents (as defined below) in connection with the construction, ownership, operation, maintenance, financing or capital improvement of the Facility (a "Project Lender") and such Project Lender may exercise its remedies with respect to such collateral assignment (including without limitation directly assuming this Agreement) all without Port's consent; (ii) this Agreement may be assigned without Port's consent or approval to the Master Association if the Master Association acquires the Facility so long as the Master Association complies with all of MRU's obligations under this Agreement and the Master Association has, or engages a party that has, the industry competence and experience, and all necessary Governmental Approvals, to perform the assignor's obligations under this Agreement; (iii) this Agreement may be assigned without such consent to a successor (by merger, consolidation, or acquisition) of MRU, but such assignment shall not relieve the assigning Party of any of its obligations under this Agreement and the successor must have, or engage a party that has, the industry competence and experience, and all necessary Governmental Approvals, to perform MRU's obligations under this Agreement; and (iv) this Agreement may be assigned to an affiliate of MRU with the approval of the Port, which approval shall not be unreasonably withheld; provided, however, such consent of Port shall not be required if the assignment is to an affiliate of MRU in its capacity as a Project Lender with respect to any debt financing or refinancing described in clause (i) above and the terms of the Financing Documents are not worse for MRU than terms reflective of an arms-length transaction and are financially beneficial to the customers of Mission Rock as a whole. The Port's approval of any Assignment requiring Port's approval is subject to the MRU demonstrating to Port's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of MRU's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with Port or City; and (c) subject to the jurisdiction of the courts of the State of California; provided that Port's approval shall not be withheld if Port would not be in violation of City laws by consenting to the Assignment and the proposed assignee (1) is similarly creditworthy as the assignor, and (2) has the industry competence and experience, and all necessary Governmental Approvals, to perform the assignor's obligations under this Agreement. A change of ownership or control of MRU or a sale or transfer of substantially all of the assets of MRU shall be deemed an Assignment for purposes of this Agreement; provided that changes in the members of the board of directors of MRU shall not constitute a change of control of MRU. MRU must immediately notify Port about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

C. In connection with any collateral assignment by MRU of this Agreement to a Project Lender as set forth in Section 8.B, Port agrees to execute and deliver a Consent and Agreement to such assignment in the form commercially reasonably requested by a Project Lender so long as Port, in consultation with the City Attorney's Office, determines that the Consent and Agreement does not materially increase Port's liabilities or materially decrease Port's benefits under this Agreement; provided, however, that such Consent and Agreement, or any substitute Consent and Agreement reasonably requested by a Project Lender, shall not result in, or purport to constitute, an amendment or modification of this Agreement. Port further agrees to furnish the Project Lender with such other documents as may reasonably be requested by the Project Lender, including evidence of Port's authority to execute and deliver this Agreement and the Consent and Agreement. In no event will Port be obligated to provide an opinion of counsel. As used herein, "**Financing Document**" means any loan or credit agreement and all related collateral security documentation, if any, now existing or hereafter executed, relating to (a) any indebtedness of MRU, or (b) any indebtedness of any member or affiliate of MRU, secured by the assets of MRU, the membership interests in MRU, or by which the assets of MRU may be encumbered, in all events all of the proceeds of which (less standard lender's and financing costs) are used to construct, own, operate, maintain or finance the Facility, perform necessary capital improvements to the Facility or refinance such approved financing. MRU or any member or affiliate of MRU that uses the assets of MRU or membership interest of MRU as security for any loan or credit agreement (the cost of which will be passed along to the customers of the Facility) must use commercially reasonable efforts to obtain cost effective financing that is financially beneficial to the customers of the Facility as whole.

## **9. INSURANCE; INDEMNIFICATION; LIABILITY.**

**9.1.General Requirements.** All insurance required under this Agreement:

(a) As to property and boiler and machinery insurance, shall name Port, City, and MRU as named insureds and Port as loss payee as its interest may appear.

(b) As to liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." MRU shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.

(c) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(d) Not more often than every year and upon not less than sixty (60) days prior written notice, as requested by either Party, Port and MRU may evaluate the insurance limits or to provide other coverage and/or different coverage amounts as may be required by Law or if in the reasonable judgement of the City's Risk Manager it would be commercially reasonable to do so. In any such event, MRU shall promptly deliver to Port a certificate evidencing such new insurance limits and meeting all other requirements under the WPA with respect thereto.

(e) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(f) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Section 9.2;

(g) Shall be subject to the approval of Port, which approval shall be limited to whether or not such insurance meets the terms of this Agreement and shall not be unreasonably withheld, conditioned or delayed; and

(h) Except for professional liability insurance which shall be maintained in accordance with Section 9.2, if any of the insurance required hereunder is provided under a claims-made form of policy, Port or MRU, as applicable, shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Agreement, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Agreement.

(i) Shall for Property Related Insurance only, provide that all losses payable under all such policies shall be payable notwithstanding any act or negligence of Port.

**9.2. Required Insurance Coverage.** MRU, 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 Twenty-Five Dollars (\$10,000,000.00) 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 MRU 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) Automobile Insurance. MRU will maintain policies of business automobile liability insurance in accordance with applicable laws covering all owned, non-owned, or hired motor vehicles to be used in connection with MRU'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.

(c) Environmental/Pollution Liability Insurance. During the course of any Hazardous Materials Remediation activities, MRU 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 Ten Million Dollars (\$10,000,000) 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).

(d) Construction Activities. At all times during any period of MRU's construction of improvements or alterations,

(i) MRU will cause MRU's Agents (including MRU'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, MRU 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) MRU will require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with MRU 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 MRU therefor.

(e) Workers' Compensation; Employer's Liability. Worker's Compensation Insurance in statutory amounts in accordance with applicable laws 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.

(f) Personal Property Insurance. MRU, at its sole cost and expense, will procure and maintain on all of MRU'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 MRU's sole discretion, for the replacement of MRU's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to MRU by Port pursuant to this Agreement in such amounts as Port deems reasonably appropriate and MRU will have no interest in the proceeds of such personal property insurance. Port will have no responsibility or obligation to maintain insurance or replace MRU's Property, alterations, or any improvements regardless of cause of loss.

(g) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require MRU to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Premises with respect to risks comparable to those associated with the use of the Premises.

### **9.3. Certificates of Insurance; Right of to Maintain Insurance.**

(a) MRU shall furnish Port certificates with respect to the policies required under Section 9.2, together with (if Port so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. MRU shall provide Port with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide Port with notice of reduction in coverage limits within thirty (30) days of MRU's knowledge of such event. If at any time MRU fails to maintain the insurance required pursuant to Section 9.2, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to MRU and opportunity to cure, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) days following demand, MRU shall reimburse Port for all reasonable premiums so paid by Port, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

(b) Port shall furnish MRU certificates with respect to the policies required under Section 9.2, together with (if MRU so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Port shall provide MRU with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide MRU with notice of reduction in coverage limits within thirty (30) days of Port's knowledge of such event.

(c) If at any time Port fails to maintain the insurance required pursuant to Section 9.2, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to Port and opportunity to cure, MRU may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to MRU. Within thirty (30) days following demand, Port shall reimburse MRU for all reasonable premiums so paid by MRU, together with all reasonable costs and expenses in connection therewith and interest thereon.

**9.4. Insurance of Others.** MRU shall require by written contract that general liability insurance policies that MRU requires to be maintained by Subtenants, Operators, contractors, subcontractors, or others in connection with their use or occupancy of, or their activities on, the Premises, include MRU and Port (using the wording described in Section 9.1 as additional insureds).

**9.5. Indemnification by MRU.** MRU shall indemnify, defend and hold harmless Port from and against (i) any liability arising out of or in any way relating to MRU's possession and control of non-potable water prior to the Delivery Point therefor, and for Wastewater after the Wastewater Collection Point, and (ii) any damage, liability or cost to the extent caused by the negligent acts, errors, or omissions of MRU or caused by the breach of any of the representations or warranties of MRU herein.

**9.6. Aggregate Yearly Limit of Liability.** Notwithstanding any other provision in this Agreement to the contrary, and without limiting MRU's obligations under Sections 9.1—9.5, and except to the extent arising under Section 9.5, the Parties agree that MRU's aggregate cumulative liability to Port in any calendar year arising out of or relating to this Agreement from any and all causes, shall not exceed an amount equal to the cumulative Water Costs calculated in accordance with Exhibit A for such calendar year (collectively, the "**Yearly Aggregate Liability Limit**").

**9.7. Intentionally Omitted.**

**9.8. Waiver of Consequential Damages.** Except with respect to payments and amounts provided for in this Agreement, in no event shall either MRU, the Port, or their respective officers, directors, partners, shareholders, affiliates, agents, employees, successors, assigns, suppliers or contractors be liable to the other Party hereunder or to its officers, directors, partners, shareholders, affiliates, agents, employees, successors, assigns, suppliers or contractors for special, indirect, consequential, punitive or exemplary damages of any nature or kind whatsoever, including loss of profits or revenue, outages or service interruptions of the Facility, loss of contracts, cost of capital or claims of customers, and MRU hereby releases the Port therefrom, and Port hereby releases MRU therefrom.

**9.9. Intent.** The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply, whether in contract, tort or otherwise, even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the Party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, and shall extend to such Party's affiliates, contractors and suppliers, and to its and their partners, shareholders, directors, officers, employees and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the expiration or earlier termination of the Agreement. The Parties confirm that (a) the exclusive remedies and measures of damages provided in this Agreement satisfy the



essential purposes hereof, (b) for breach of any provision for which an exclusive remedy or measure of damages is provided, such exclusive remedy or measure of damages shall be the sole and exclusive remedy, (c) the obligor's liability shall be limited as set forth in such provisions, and (d) with respect to such provisions, all other remedies or damages at law or in equity are waived.

**9.10. Disclaimer.** Except as expressly provided herein, MRU makes no representations, warranties or guarantees, express or implied, concerning the Facility, the supply of water for non-potable uses, the collection of Wastewater, or any other matter under this Agreement, and MRU disclaims any representation, warranty or guaranty implied by law, and any representations or warranties of custom or usage.

## **10. ADDITIONAL REQUIREMENTS INCORPORATED BY REFERENCE.**

**10.1. Laws Incorporated by Reference.** The full text of the laws listed in this Section 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“**Mandatory City Requirements**”) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/).

**10.2. Conflict of Interest.** By executing this Agreement, MRU certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3. Prohibition on Use of Public Funds for Political Activity.** In performing its obligations under this Agreement, MRU shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. MRU is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4. Consideration of Salary History.** To the extent applicable, MRU shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” MRU 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 to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. MRU is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. MRU is

required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

**10.5. Nondiscrimination Requirements.**

(a) **Non Discrimination in Contracts.** MRU shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. MRU shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. MRU is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. MRU does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6. Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** MRU shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). MRU is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7. Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this contract, MRU shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. MRU is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. MRU is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, MRU certifies that it complies with Chapter 12P.

**10.8. Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, MRU shall comply with the requirements of Chapter 12Q. For each Covered Employee, MRU shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If MRU chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. MRU is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by MRU shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**10.9. First Source Hiring Program.** MRU must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and MRU is subject to the enforcement and penalty provisions in Chapter 83.

**10.10. Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require MRU to remove from, City facilities personnel of any MRU or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11. Limitations on Contributions.** By executing this Agreement, MRU acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, 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 months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of MRU's board of directors; MRU's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in MRU; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by MRU. MRU certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12. Consideration of Criminal History in Hiring and Employment Decisions.**

(a) MRU agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. MRU is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a MRU's or subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.13. Public Access to Nonprofit Records and Meetings.** If MRU receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, MRU must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

**10.14. Food Service Waste Reduction Requirements.** MRU shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.15. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges MRU not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.16. Compliance with Laws.** MRU shall keep itself fully informed of City’s Charter, codes, ordinances and regulations of City and of all state and federal laws in any manner affecting the performance of this Agreement and must at all times comply with such codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

## **11. EVENT OF DEFAULT; REMEDIES**

**11.1. Events of Default.** A Party shall be in default under this Agreement upon the occurrence of any one or more of the following (each an “**Event of Default**”):

(a) any petition of bankruptcy is filed by or against such Party or such Party is adjudicated as bankrupt or insolvent, and such adjudication is not vacated or in the case of an involuntary petition, dismissed within ninety (90) days; or if a receiver or trustee is appointed and such appointment is not vacated within ninety (90) days; or if such Party makes an assignment for the benefit of creditors;

(b) such Party fails to make, when due, any undisputed payment required pursuant to this Agreement and with respect to Port only, the Controller has certified the availability of funds for such undisputed amount, and such Party does not cure such failure within ninety (90) days following receipt of notice from the other Party demanding payment;

(c) such Party fails to perform any other of its material obligations under this Agreement in accordance with the requirements of this Agreement, and such Party does not cure such failure within ninety (90) days following receipt of notice from the other Party demanding such cure (or, if such failure is curable, within such longer period of time, not to exceed a maximum cure period of an additional ninety (90) days, as is reasonably necessary to accomplish such cure without material adverse effect on the other Party, if the cure cannot be reasonably accomplished within the initial ninety (90)-day period and the defaulting Party diligently commences and completes such cure in such longer period).

**11.2. Remedies.** Subject to the limitations set forth herein, upon the occurrence and during the continuation of an Event of Default, the Party not in default shall have the right to pursue any remedy under this Agreement now or hereafter existing under applicable law or in

equity, including an action for direct damages, specific performance, and obtaining temporary water from other sources upon the suspension of water deliveries for over 48 hours (or less if public health or safety necessitates Port obtaining temporary water from other sources) for the duration of such suspension; *provided, however*, that in the case of an Event of Default by MRU, Port shall provide any Project Lender with notice of such Event of Default and the Project Lender shall have the right to cure MRU's Event of Default as set forth in the Consent and Agreement to be entered into among MRU, Port and the Project Lender pursuant to the provisions of Section 8.C; *provided, further however*, that in the case of an Event of Default by the Other Park Tenant, MRU shall provide Port with notice of such Event of Default and Port shall have the right to cure within sixty (60) days of Port's receipt of the notice, the Other Park Tenant's Event of Default. In no event will MRU have any remedies against Port for a default or Event of Default by the MRC Park Tenant.

**11.3. Additional MRU Remedy-Suspension of Delivery of Non-Potable Water.** In addition to the remedies set forth in Section 11.2, MRU has the following additional remedy: if Port or the Other Park Tenant (as opposed to the Park MRC Tenant) fails to pay an undisputed amount under this Agreement within ninety (90) days of the due date (subject to additional conditions and time periods to pay in accordance with Sections 2.D and 2.E): MRU shall have the right, in addition to all other rights and remedies hereunder, after ninety (90) days prior written notice to Port and if applicable, the Other Park Tenant, to suspend or curtail the delivery of water for non-potable uses until such undisputed amount is paid in full. In no event will MRU have the right to suspend or curtail the delivery of water for non-potable uses for the Park MRC Tenant's failure to pay undisputed amounts then due or for the Park MRC Tenant's default under any other provision of this Agreement.

**11.4. Additional Port Remedy.** In addition to the remedies set forth in Section 11.2, subject to Force Majeure, Port and any Other Park Tenant has the following additional remedy if MRU fails to supply water to the Premises (either potable or non-potable) for 4-months: (i) Port and the Other Park Tenant, as applicable, will have no obligations to make any payments going forward until water service is fully restored (as opposed to intermittent non-potable water service), and (ii) no late charges or penalties will be assessed for any non-payment the period before water service is fully restored. For purposes of this Section 11.4, "4-months" or "4-month period" means a 4-month period where there is no water service or only intermittent water service to the Premises.

**11.5. Remedies Cumulative.** Except as otherwise expressly provided herein, all rights and remedies of the Parties set forth in this Agreement shall be cumulative and no remedy available to a Party not in default hereunder shall be exclusive of any other remedy.

## **12. FORCE MAJEURE.**

**12.1. Excused Performance.** Except for the obligation to timely make the payments required under this Agreement, and except as otherwise provided herein, if a Party shall be wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through strikes, lightning, rain, wind, riots, fire, earthquake, flood, invasion, insurrection, equipment failures, the order of any court, judge or civil authority, war, any act of God, the public enemy, or any other similar cause reasonably beyond its exclusive control and not attributable to its intentional acts or negligence ("**Force Majeure**"), then and in any such event, the affected Party shall be excused from whatever performance is prevented by such event to the extent so prevented. For avoidance of doubt, any event wholly or partially preventing performance attributable to the acts, omissions, or negligence of a Party is not a Force Majeure event.

**12.2. Consequences of Force Majeure.** The failure to perform services or deliver non-potable water due to an outage caused by Force Majeure shall not result in a reduction in the fixed payment or operation and maintenance charges set forth in the Exhibit A during the occurrence of the applicable Force Majeure event so long as MRU is complying with all legal requirements.

**12.3. Consequences of Extended Force Majeure.** Notwithstanding any provision in this Agreement to the contrary, if either Party is rendered substantially unable to perform its material obligations hereunder due to Force Majeure and the continuing effect of such Force Majeure has not been fully removed or fully alleviated within twelve (12) months after the date such Force Majeure was initially declared, then either Party shall have the right, so long as such Force Majeure (or the effect thereof) continues, to terminate the Agreement, without further liability or responsibility hereunder (except for any liability which expressly survives the termination of the Agreement), upon thirty (30) days written notice to the other Party; provided, however, that Port shall not exercise its right to terminate the Agreement pursuant to this Section 12.3 if MRU has been unable to fully remove the effect of a Force Majeure event within the aforesaid twelve (12) month period despite its diligent efforts to do so, so long as MRU is continuing diligently in good faith to pursue remedial actions (including such construction or restoration work as is necessary) in order to remove the effect of such Force Majeure.

### **13. NOTICES.**

Unless otherwise indicated in this Agreement, all written communications sent by the parties may be by U.S. mail, overnight delivery by a nationally recognized delivery service or e-mail, and shall be addressed as follows:

To Port: [Person and/or Position]  
Port of San Francisco  
Pier 1, The Embarcadero  
San Francisco, CA 94111

To MRU: Mission Rock Utilities, Inc.  
c/o Tishman Speyer Development, L.L.C.,  
One Bush Street, Suite 500,  
San Francisco, California, 94104  
Attention: Assistant General Counsel

With a copy to:

EG Services, LLC  
305 St. Peter St.  
St. Paul, MN 55102

Any notice of default must be sent by registered mail or overnight delivery by a nationally recognized delivery service. Either party may change its address by giving the other party written notice of its new address as herein provided.

#### **14. DISPUTE RESOLUTION.**

**14.1.** With respect to any dispute which arises under this Agreement, MRU may submit to the Contracting Officer (as defined in Admin. Code Sec. 21) a written request for administrative review and documentation of MRU's claims. Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing MRU of its right to judicial review. A copy of the Contracting Officer's decision shall be mailed or otherwise promptly delivered to MRU. The Contracting Officer's decision shall be final unless appealed to a court of competent jurisdiction by MRU. If the Contracting Officer does not issue a written decision within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then MRU may proceed as if an adverse decision had been received.

**14.2.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse MRU's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

#### **15. ENTIRE AGREEMENT; AMENDMENTS.**

This Agreement, including each exhibit attached and incorporated into this Agreement, constitutes the entire agreement between the parties relating to the rights granted and obligations assumed in this Agreement. With respect to any exhibit attached and incorporated into this Agreement, MRU shall have the right to modify such exhibit without the execution of a subsequent written amendment if such modification has been approved in writing by the City or Port. Except as provided herein, any oral representations or modifications concerning this Agreement have no force and effect unless and until contained in a subsequent written amendment that is executed and approved in the same manner as this Agreement.

#### **16. GOVERNING LAW AND VENUE.**

The formation, interpretation and performance of this Agreement is governed by the laws of the State of California. Each party consents to and agrees that venue for all litigation relative to the formation, interpretation and performance of this Agreement must be in San Francisco.

#### **17. SUCCESSORS.**

This Agreement is binding upon and will inure to the benefit of the respective successors and permitted assigns of the parties.

#### **18. SEVERABILITY.**

If any clause or provision of the Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws, or any rules or regulations of any governmental body or entity, effective during its term, the intention of the parties is that the remaining parts of

this Agreement will remain in full force and effect so long as the fundamental purpose of the Agreement is not destroyed.

**19. WAIVER.**

No waiver of any breach may be deemed to constitute a waiver of any other or subsequent breach.

**20. SURVIVAL.**

Sections 2.A-2.C, 2E-2.I, 8, 9.2, 9.4, 9.5, 9.6, 9.8, 9.9, 9.10, 11.2, 11.5, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, Section 4 of Exhibit A, and any other provisions of this Agreement that by their nature are intended to be performed or to be applicable, or that impose obligations, after the termination of this Agreement shall survive the expiration or earlier termination of this Agreement for the terms specified therein, if any, and otherwise indefinitely, but shall apply solely with respect to matters related to the period prior to the expiration or termination of this Agreement.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which taken together constitute one and the same instrument.

**22. SUNSHINE ORDINANCE.**

MRU acknowledges that this Agreement and certain records associated herewith are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**23. MACBRIDE PRINCIPLES – NORTHERN IRELAND.**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, MRU confirms that MRU has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



In Witness Whereof, this Agreement is entered into as of the date first above written.

**MRU:**

MISSION ROCK UTILITIES, INC.,  
a Delaware Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**PORT:**

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through the  
SAN FRANCISCO PORT COMMISSION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Deputy City Attorney

**SCHEDULE 1**  
**Initial Premises**

## **EXHIBIT A Water Costs**

### **1. Payment Composition**

For each monthly billing period, the payment to be made by Port pursuant to Section 2.D of the Agreement shall be the sum of the following charges:

(a) Non-Potable Water Capacity Charges (“NPWCC”), calculated in accordance with Paragraph 2 below; and

(b) Non-Potable Water Flow Charges, calculated in accordance with Paragraph 3 below.

### **2. Non-Potable Water Capacity Charges (“NPWCC”)**

2.1 The NPWCC shall be determined as follows:

(a) Non-Potable Water Capacity Related Costs (“NPWCRC”) relative to a calendar year shall mean the following: (1) general and administrative costs including but not limited to management and personnel costs; (2) operation and maintenance costs including but not limited to maintenance, repairs and labor costs; (3) consumables including but not limited to water, sewer, chemicals, electricity and fuel costs; (4) debt service and financing costs net of interest income from Project Financing only; (5) net changes in working capital; (6) capital expenditures not amortized through debt service and net increases during such year for reserves for replacements and capital improvements; (7) amounts not collectible for NPWCC due; (8) late fees and charges relative to the NPWCC; (9) amounts, if any, required to meet minimum debt coverage requirements under any indenture or any financing debt agreement; (10) all taxes and fees imposed on MRU related to the non-potable water system, including excess use charges; (11) all other cost reasonably related to the operation of the non-potable water system; (12) less amounts received from Non-Potable Water Flow Charges under this Agreement and Non-Potable Water Flow Charges under the Master Association RWSA; and (13) less amounts that are included in any of the foregoing items but are MRU’s responsibility as described in Section 2.G. The NPWCRC shall not include non-cash items such as depreciation or amortization costs.

(b) “**NPW Aggregate Capacity**” shall be the sum of all MRU’s non-potable water customers’ Contract Capacity during a calendar year; provided that NPW Aggregate Capacity for Phase 1 is 25,462 gallons per day. “**Contract Capacity**” during any applicable period of time shall be the portion of NPW Aggregate Capacity that MRU has allocated for use by a customer. MRU shall determine each customer’s Contract Capacity in MRU’s reasonable discretion based on estimated customer usage, subject to the schedule below. “**Port’s Contract Capacity**” during any applicable period of time shall be the portion of NPW Aggregate Capacity that MRU has allocated for use by the Port in accordance with the schedule below; provided that Port’s Contract Capacity for Phase 1 is

6,575 gallons per day). NPW Aggregate Capacity and Port Contract Capacity are projected to follow the following schedule:

	Phase 1	Phase 1-2	Phase 1-3
	Gallons Per Day Peak		
Port (Contract Capacity)	6,575	8,091	8,800
Other Users	18,887	32,957	35,963
<b>Total (NPW Aggregate Capacity)</b>	<b>25,462</b>	<b>41,048</b>	<b>44,763</b>

- (c) For each calendar year, the NPWCC shall be equal to the projected NPWCRC divided by NPW Aggregate Capacity multiplied by the Port’s Contract Capacity. The Port shall pay the annual NPWCC in the calendar year beginning such January 1 in twelve equal billing period installments.
- (d) If the First Service Date commences after January 1 of a calendar year, the NPWCC shall be equal to the projected NPWCRC divided by NPW Aggregate Capacity, divided by twelve, multiplied by the Port’s Contract Capacity, and then multiplied by the number of months from the Port’s First Service Date to the end of the calendar year. The Port shall pay the annual NPWCC equal billing period installments for the number of months from the Port’s First Service Date to the end of the calendar year.
- (e) The Port shall pay the annual NPWCC in equal billing period installments for the number of months from the Port’s First Service Date to the end of the calendar year.

**3. Non-Potable Water Flow Charges (“NPWFC”)**

3.1 The NPWFC shall be determined as follows:

- (a) The Non-Potable Water Flow Charges (“NPWFC”) is a monthly charge calculated based on the monthly metered non-potable water usage in cubic feet times the Non-Potable Water Flow Rate (“NPWFR”). The NPWFR is initially set at **\$33.12** per 100 cubic feet of water (“NPW Base Rate”) for service prior to January 1, 2023. The NPW Base Rate will increase by 5% annually each January 1st, commencing on January 1, 2023.

**4. Port Annual Cap**

4.1. Notwithstanding anything set forth in this Agreement, in no event will the total annual charges or fees (including but not limited to the NPWCC and Non-Potable Water Flow Charges) or any other payment obligation of Port, Park MRC Tenant or any Other Park Tenant under this Agreement exceed the lesser of (i) the amount certified by the Controller for the applicable period or (ii) \$672,145 for each calendar year (the “**Port Annual Cap**”).

4.2. The Port Annual Cap for each calendar year will increase by the Escalator as defined in the RMA each January 1st, commencing on January 1, 2024. The Port Annual Cap cannot otherwise

increase without Port Commission and the City's Board of Supervisors and the Mayor's approval. If during the term of the Agreement MRU and the Port staff determine and mutually agree that (i) an increase in the Port Annual Cap is appropriate as a result of (a) applicable statutes and regulations or (b) to cover Port's allocable share of costs in connection with a capital event affecting the upstream sewer improvements related to the Facility, or (ii) that a decrease in the Port Annual Cap is appropriate as a result of future development resulting in a disproportionately high Port Annual Cap, then the parties may seek such necessary approvals. No party will be compelled to enter into any such amendment and any approval by the Port Commission and Board of Supervisors and the Mayor will be granted or denied at those parties' sole discretion.

5. **Projected Costs.** The maximum Port Annual Cap (if escalated by the maximum 5 percent each year for the entire term) is set forth in Exhibit A-2. An illustrative example of hypothetical costs based on the completion of Phase 2 and Phase 3 is set forth in Exhibit A-3.

**EXHIBIT A-2**  
**Port Projected Annual Cost Cap**

The table below illustrates the Port Annual Cap for Year 1 of the Agreement and future years if hypothetically escalated at 5 percent, the highest possible rate of the Escalator as defined in the RMA. The actual Port Annual Cap for each calendar year will actually increase by the Escalator as defined in the RMA each January 1st, commencing on January 1, 2024 and may be amended if approved by the Port Commission, Board of Supervisors, and Mayor. The columns labeled Port Non-Potable Water Capacity Charges and Port Non-Potable Water Flow Charges in the table below illustrate hypothetical projected costs and are for illustrative purposes only.

<b>Year</b>	<b>Port Non-Potable Water Capacity Charge (\$)</b>	<b>Port Non-Potable Water Flow Charge (\$)</b>	<b>Port Annual Cap (\$)</b>
<b>1</b>	607,534	64,611	672,145
<b>2</b>	637,911	67,841	705,752
<b>3</b>	669,806	71,234	741,040
<b>4</b>	703,297	74,795	778,092
<b>5</b>	738,462	78,535	816,997
<b>6</b>	775,385	82,462	857,846
<b>7</b>	814,154	86,585	900,739
<b>8</b>	854,862	90,914	945,776
<b>9</b>	897,605	95,460	993,064
<b>10</b>	942,485	100,233	1,042,718
<b>11</b>	989,609	105,244	1,094,854
<b>12</b>	1,039,090	110,507	1,149,596
<b>13</b>	1,091,044	116,032	1,207,076
<b>14</b>	1,145,596	121,833	1,267,430
<b>15</b>	1,202,876	127,925	1,330,801
<b>16</b>	1,263,020	134,321	1,397,341
<b>17</b>	1,326,171	141,038	1,467,208
<b>18</b>	1,392,479	148,089	1,540,569
<b>19</b>	1,462,103	155,494	1,617,597
<b>20</b>	1,535,209	163,269	1,698,477
<b>21</b>	1,611,969	171,432	1,783,401
<b>22</b>	1,692,568	180,004	1,872,571
<b>23</b>	1,777,196	189,004	1,966,200
<b>24</b>	1,866,056	198,454	2,064,510
<b>25</b>	1,959,358	208,377	2,167,735
<b>26</b>	2,057,326	218,795	2,276,122
<b>27</b>	2,160,193	229,735	2,389,928
<b>28</b>	2,268,202	241,222	2,509,424
<b>29</b>	2,381,612	253,283	2,634,896
<b>30</b>	2,500,693	265,947	2,766,640

**EXHIBIT A-3**  
**Port Projected Costs**

For illustrative purposes only, the table below illustrates hypothetical projected costs based on the completion of Phase 2 and Phase 3 of the project and the maximum allowable increase of 5 percent annually.

<b>Year</b>	<b>Port Non-Potable Water Capacity Charge (\$)</b>	<b>Port Non-Potable Water Flow Charge (\$)</b>	<b>Total Projected Costs (\$)</b>
<b>1</b>	552,304	64,611	616,915
<b>2</b>	579,919	67,841	647,760
<b>3</b>	608,915	71,234	680,148
<b>4</b>	639,361	74,795	714,156
<b>5 (Phase 2)</b>	512,170	95,421	607,591
<b>6</b>	537,778	100,192	637,970
<b>7</b>	564,667	105,202	669,869
<b>8</b>	592,900	110,462	703,362
<b>9</b>	622,545	115,985	738,530
<b>10 (Phase 3)</b>	652,029	131,862	783,891
<b>11</b>	684,630	138,455	823,085
<b>12</b>	718,862	145,377	864,239
<b>13</b>	754,805	152,646	907,451
<b>14</b>	792,545	160,279	952,824
<b>15</b>	832,173	168,293	1,000,465
<b>16</b>	873,781	176,707	1,050,488
<b>17</b>	917,470	185,543	1,103,013
<b>18</b>	963,344	194,820	1,158,163
<b>19</b>	1,011,511	204,561	1,216,072
<b>20</b>	1,062,086	214,789	1,276,875
<b>21</b>	1,115,191	225,528	1,340,719
<b>22</b>	1,170,950	236,805	1,407,755
<b>23</b>	1,229,498	248,645	1,478,143
<b>24</b>	1,290,973	261,077	1,552,050
<b>25</b>	1,355,521	274,131	1,629,652
<b>26</b>	1,423,297	287,837	1,711,135
<b>27</b>	1,494,462	302,229	1,796,692
<b>28</b>	1,569,185	317,341	1,886,526
<b>29</b>	1,647,645	333,208	1,980,852
<b>30</b>	1,730,027	349,868	2,079,895

## EXHIBIT B Project Scope

### 1 General

#### 1.1 Facility Information

The Mission Rock Blackwater Treatment Facility (MRBWTF) is an advanced water recycling facility treating a portion of the combined blackwater/greywater waste stream<sup>1</sup> from the Mission Rock development.

Project Applicant	Mission Rock Utilities, Inc.
Facility Name	Mission Rock Blackwater Treatment Facility
Facility Address	No street address has been assigned yet to the building where the facility will be located. The facility will be in Parcel "B," an exterior parcel within the Mission Rock project boundary, bound by 3rd Street to the west, the future Spur Street to the north, the future Plank Road to the east and the future Channel Street to the south.
Facility Owner	Mission Rock Utilities 24 Willie Mays Plaza San Francisco, CA 94107
Development Type	<input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Mixed <input checked="" type="checkbox"/> New <input type="checkbox"/> Existing <input type="checkbox"/> Other
Total Square Footage	Commercial: 2,105,307 square feet Residential: 959,462 square feet Total: 3,354,580 square feet
Number of Floors	See Table 2
Residential Units	1,142
Occupancy and Staffing	Hours Building Will Be Occupied: 24 hrs/day Hours Building Staff Will be Present: Building Engineers 12 hrs/day, 5 days/week. Security 24 hrs/day, 7 days/week. Days of Week Building will be Occupied: 7-days/week

<sup>1</sup>The term "blackwater" is used in this Design Report to refer to municipal wastewater generated by the mixed-use (residential, retail, restaurant and office) development. Blackwater is defined in the San Francisco Health Code, Article 12C, Section 12C.2 as "wastewater containing bodily or other biological wastes, as from toilets, dishwashers, kitchen sinks and utility sinks" while graywater is defined to include "wastewater from bathtubs, showers, bathroom sinks, lavatories, clothes washing machines and laundry tubs." This project will have a single system of waste piping collecting both blackwater and graywater, as defined in Section 12C.2, and once combined will be referred to as blackwater. "Blackwater," as used in this document, includes blackwater wastes described in Section 12C.2 as well as greywater wastes.



Alternate Water Sources	<input type="checkbox"/> Rainwater <input type="checkbox"/> Foundation Drainage <input type="checkbox"/> Stormwater <input checked="" type="checkbox"/> Greywater <input checked="" type="checkbox"/> Blackwater
Total Daily Inflow	55,200 gpd average annual 64,000 gpd maximum day
Non-Potable Water End Uses (indoor)	<input checked="" type="checkbox"/> Toilet and Urinal Flushing for <b>956</b> toilets and <b>51</b> urinals in Phase 1 buildings. Number of fixtures for Phase 2 – 4 buildings is unknown at this time. <input checked="" type="checkbox"/> Priming Drain Traps <input type="checkbox"/> Clothes Washing
Non-Potable Water End Uses (outdoor)	<input checked="" type="checkbox"/> Subsurface Irrigation <input checked="" type="checkbox"/> Drip or other surface non-spray irrigation <input type="checkbox"/> Spray Irrigation <input type="checkbox"/> Decorative Fountains and Impoundments <input checked="" type="checkbox"/> Cooling Applications (project phases 1, 2 and 3 only) <input type="checkbox"/> Dust Control/Street Cleaning
Average Daily Distribution	37,350 gpd (average annual) 42,900 gpd (peak day)

The Mission Rock development is located within the City and County of San Francisco and will consist of 11 parcels with a mixture of residential, restaurant, office and other retail occupancies. The site is bounded by Third Street to the west, Mission Rock Street to the south, China Basin to north and Piers 48 and 50 along the San Francisco Bay to the east.

The sanitary sewer layout for those parcels and the location of the lift station and MRBWTF is shown in Figure 1.1.



Figure 1.1 – Sanitary Sewer and Building Locations for the Mission Rock Development

The areas for each of the occupancies in each parcel/building is detailed in Table 1.2. The development will house approximately 2,400 permanent residents along with transient occupants for 1.3 million square feet of office space and 207,000 square feet of retail space.

Table 1.2 – Mission Rock Project Data

Bldg	Num Flrs	Gross Sq.Ft.	Residential RSF <sup>2</sup>	Residential Units	Residents	Non-Food Retail RSF	Food-Related RSF	Office RSF
A	23	370,361	219,335	282	564	7,474	7,474	48,447
B	8	273,506	-			9,249	9,249	255,008
C	13	354,826	-			13,489	13,489	327,848
D1	23	240,494	240,494	259	569	-	-	-
D2		994,307				4,647	4,647	-
E	6	141,330	-			7,153	7,153	127,024
F	23	310,183	177,510	258	516	18,741	18,741	-
G	13	299,603	-			8,140	8,140	283,323
H	11	200,315	180,697	192	422	9,809	9,809	-
I	6	151,932	-			9,890	9,890	127,024
J	6	151,982	-			10,136	10,136	132,153
K	11	130,469	122,162	131	288	4,154	4,154	-
CBP <sup>3</sup>		1,500					1,500	
<b>TOTAL</b>		<b>3,620,808</b>	<b>940,198</b>	<b>1,122</b>	<b>2,359</b>	<b>102,882</b>	<b>104,382</b>	<b>1,305,514</b>

The north and south halves of the Mission Rock project will have separate blackwater collection systems; blackwater for properties north of Channel Street/Lane and Mission Rock Square will flow to the Influent Pump Station and the Blackwater Treatment Facility (BWTF) in Building B, the subject of this report. Sewage from properties to the south will flow by gravity to the SFPUC sewer in Mission Rock Street. Sewage flows to be handled by the MRBWTF are detailed in Table 1.3a and 1.3b.

Table 1.3a – Blackwater Flows (gpd) to MRBWTF

Bldg	Primary Use	Total	Residential	Restaurant	Other Commercial
A	Residential	26,009	19,556	5,479	974
B	Commercial	11,298	-	6,781	4,517
F	Residential	32,011	17,891	13,739	381
G	Commercial	9,020	-	5,968	3,053
J	Commercial	9,873	-	7,431	2,442
K	Residential	13,123	9,993	3,045	84
CBP <sup>3</sup>	Park	1,779		1,100	679
	<b>Total</b>	<b>103,113</b>	<b>47,440</b>	<b>43,542</b>	<b>12,131</b>

<sup>2</sup> Does not include space for shared amenities, misc. circulation and back-of-house uses

<sup>3</sup> CBP = China Basin Park

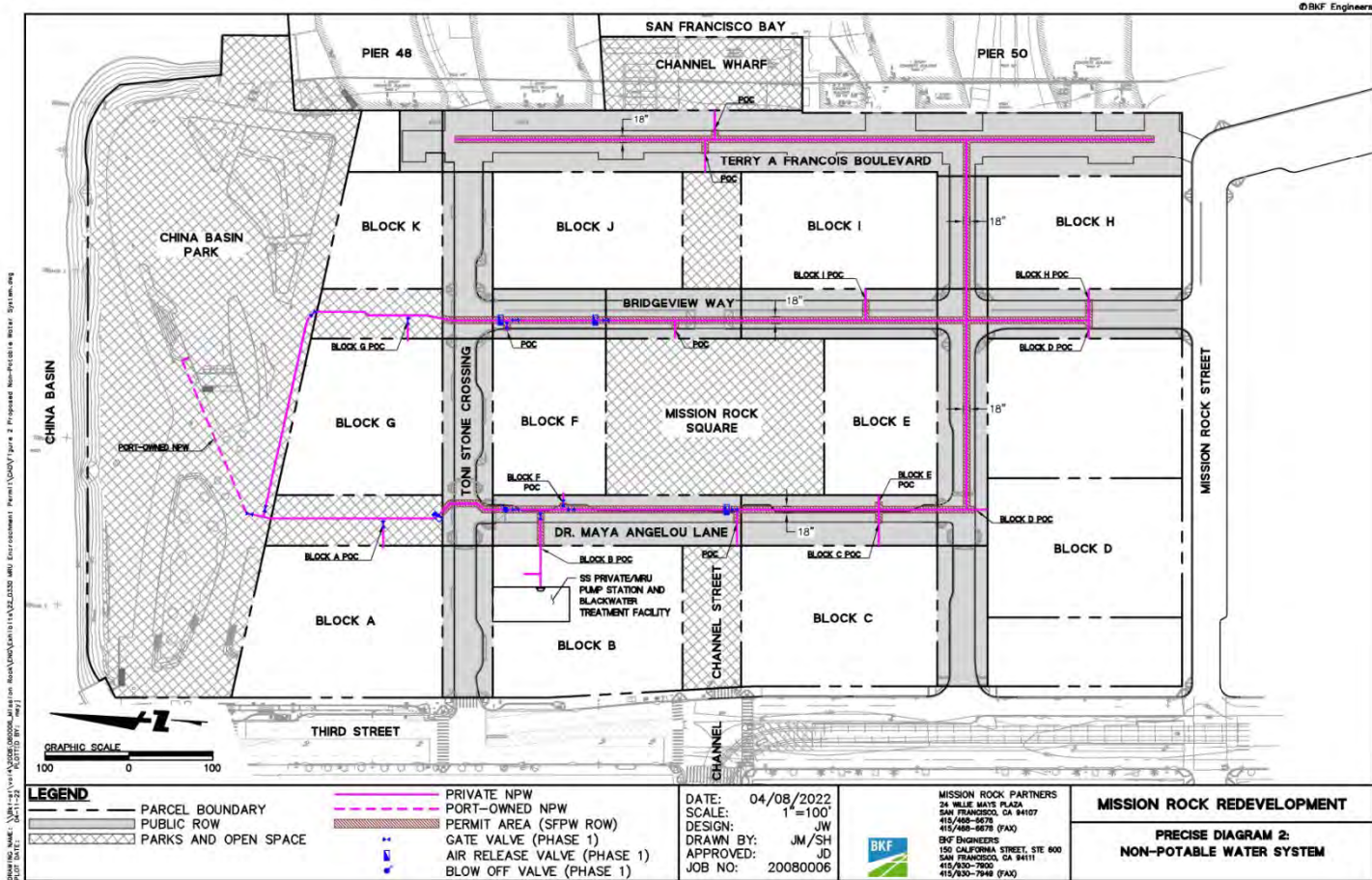
Up to 62% of these flows (64,000 gpd out of 103,113 gpd) will be processed by the BWTF. The remaining flow will be pumped directly to the SFPUC sewer.

Table 1.3b – Blackwater Flows (gpd) Directly to SFPUC Sewer

Parcel	Primary Use	Total	Residential	Restaurant	Other Commercial
<b>C</b>	Commercial	15,729	-	9,889	5,840
<b>D1</b>	Residential	19,757	19,757	-	-
<b>D2</b>	Parking	3,505	-	3,407	98
<b>E</b>	Commercial	7,546	-	5,244	2,302
<b>H</b>	Commercial	22,036	14,646	7,191	199
<b>I</b>	Commercial	9,695	-	7,250	2,444
	<b>Total</b>	<b>78,267</b>	<b>34,403</b>	<b>32,981</b>	<b>10,883</b>

The total blackwater flow generated by the development is estimated to be **181,380 gpd**.

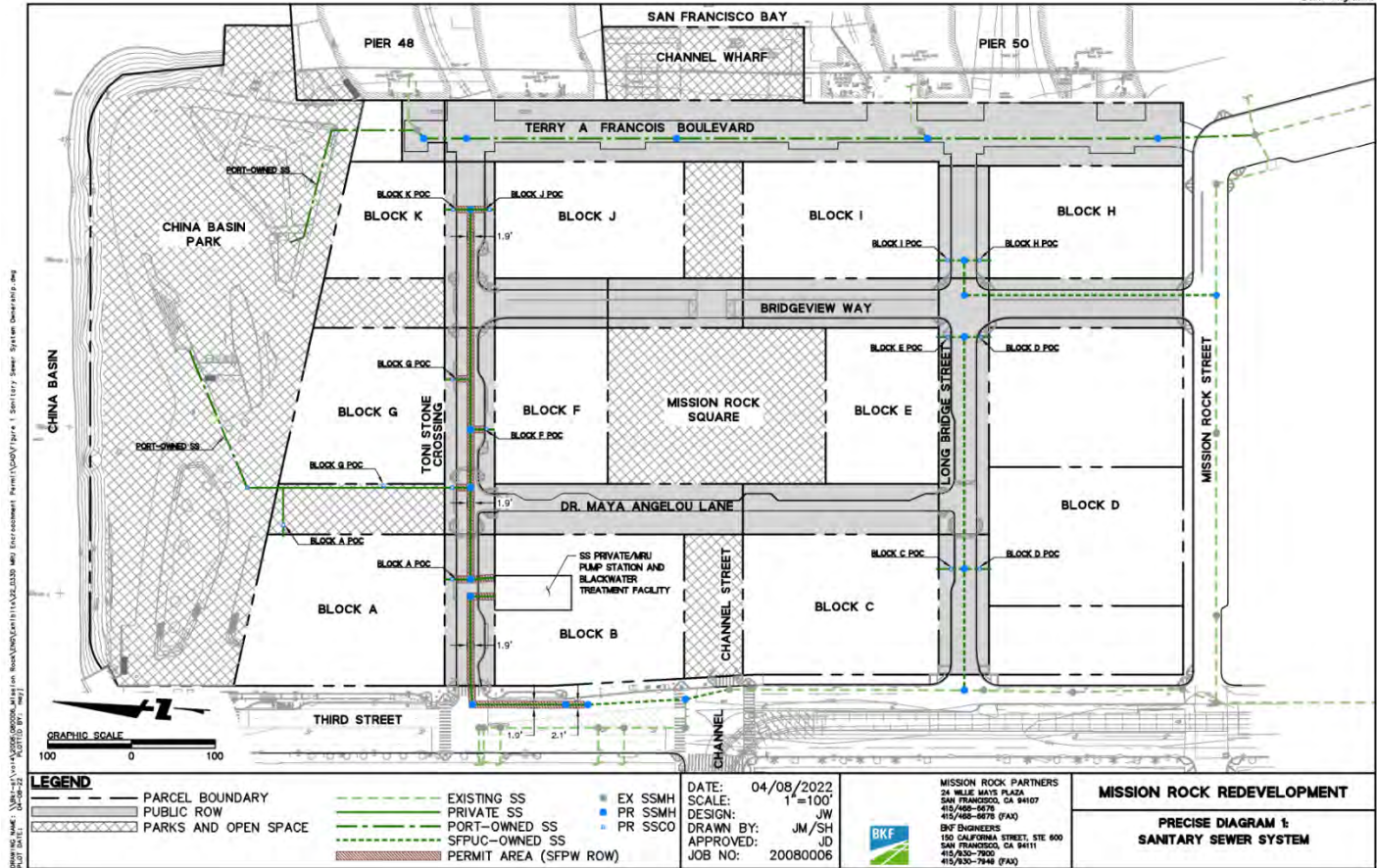
# Exhibit C—Location of Non-Potable Water Delivery Points





# Exhibit D—Location of Wastewater Collection Points

©BKF Engineers







## **Exhibit F—Description of Equipment Owned by MRU and Port**

### **Non-Potable Water System**

MRU NPW equipment will be installed in the public right of way, and in Port Open Spaces, up to the point of connection as designated on the drawing in Exhibit C. Generally, the SF Port will own all NPW equipment on the service side of the point of connection designated on the drawing in Exhibit C. The MRU-owned NPW flow meter assembly will be installed in the China Basin Park F&B Pavilion. Other MRU-owned NPW flow meters used for irrigation will be installed at each point of connection.

See Exhibit E for a plan exhibit showing NPW equipment ownership.

### **Wastewater (Sanitary Sewer) System**

MRU will own the Blackwater Treatment Plant and the effluent sanitary sewer force main from the plant in Toni Stone Crossing and Third Street up to the second manhole. SFPUC owns the sanitary sewer main downstream from the second manhole. MRU will also own the sanitary sewer main in the public right of way in Dr. Maya Angelou Lane and Toni Stone Crossing to the point of connection at Building B.

The SF Port will own all wastewater equipment in China Basin Park and Mission Rock Square serving the structures in those Open Space parcels.

See Exhibit E for a plan exhibit showing wastewater system equipment ownership.

## Exhibit G—MRU Interconnection Requirements (Including Maximum Pressure, Flow, Temperature, Water Quality and Other Data Related to the Delivery of Recycled Water)

### 3 Effluent Requirements

The recycled water quality is governed by regulations of the San Francisco Department of Public Health<sup>6</sup>. Many of the treatment requirements in the Director’s Rules and Regulations are treatment-performance based and will be discussed further in the sections detailing unit process design. Effluent water quality limits are:

Parameter	Water Quality Limit	Monitoring Frequency
BOD <sub>5</sub>	Maximum Concentration ≤ 25 mg/L 4-week Avg Concentration ≤ 10 mg/L (startup)	Weekly, Monthly
TSS	Maximum Concentration ≤ 30 mg/L 4-week Avg Concentration ≤ 10 mg/L (startup)	Weekly, Monthly
Virus	8.5 log reduction	Continuously via surrogate parameters
Protozoa	7.0 log reduction	Continuously via surrogate parameters
Bacteria	6.0 log reduction  Meet the Total Coliform requirements listed below: <ul style="list-style-type: none"> <li>• The median concentration shall not exceed an MPN of 2.2 /100 mL utilizing the bacteriological results of the last seven days for which analyses have been completed; and</li> <li>• The maximum number shall not exceed an MPN of 23 /100 mL in more than one sample in any 30 day period; and</li> <li>• No sample shall exceed an MPN of 240 /100 mL at any time.</li> </ul>	Daily
Turbidity	Membrane Filter: maximum turbidity shall not exceed 0.2 NTU more than 5% of the time within a 24-hour period. No sample shall exceed 0.5 NTU at any time.	Continuously
Chlorine Residual	The chlorine residual shall be ≤ 0.5 mg/L. A chlorine residual measurement below 0.5 mg/L for a duration of more than one hour must be reported to DPH; diversion may not be required but should be considered while the problem is corrected.	Continuously
pH	At all times the pH shall be between 6 and 10 <sup>7</sup>	Weekly
Odor	The system shall not emit offensive odors	N/A

### Non-Potable Water Distribution

MRU will own, operate, and maintain the non-potable water (NPW) distribution system, as well as the forced sewer main from the black water recycling plant in building B to the second manhole in 3<sup>rd</sup> Street.

## **Piping**

- Ductile Iron Pipe (DIP) recycled water piping is used, according to San Francisco Public Utility Commission (SFPUC) Water standards.
- DIP class 53, zinc-coated with V-Bio polyethylene encasement and cement-mortar lined double the standard thickness. Manufacturer: American Ductile Iron Pipe with Fastite® bell and spigot joint with Fast-Grip® restraining gaskets.

## **Fittings**

- DIP bell and spigot push-on Tyton joint with Field-Lok™ restraining gasket. Manufacturer: Tyler/Union, Sigma or Star Pipe.

## **Valves**

- Gate valves with slip-on ends and Field-Lok™ restraining gasket. Epoxy-coated inner and outer surfaces. Manufacturer: Mueller.
- H/20 rated valve boxes with bolt down cast iron lids marked “MRU RECLAIMED WATER”.

## **Piping System**

- The NPW piping system is using fully restrained joints, thereby not requiring any thrust blocks.

## **Design Parameters**

- Operating pressure of 65 psi with a max pressure of 90 psig and a test pressure of 225 psig.

## **Forced Sewer Main**

### **Piping**

- HDPE sewer piping according to SFPUC Water standards.
- DR17 PE3408 HDPE with a minimum pressure rating of 125 psig.

### **Fittings**

- Rated for the same pressure as the mating pipes.

### **Valves**

- Not applicable.

### **Piping System**

- The forced sewer piping system is using fully restrained joints, thereby not requiring any thrust blocks.
- All joints are heat fused.

### **Design Parameters**

- Operating pressure 13 psi with a max pressure of 16 psig and a test pressure of 115 psig.
- Influent temperature assumed at an average of 20 deg C, with a 16 deg C minimum and 24 deg C maximum

## MEMORANDUM

September 20, 2019

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Victor Makras  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request (1) Approval of Phase 1 Budget and other key implementing actions including the Affordable Housing Subsidy Plan and increases to the Community Facilities Special Tax Rates for the Mission Rock Project at Seawall Lot 337, bounded by China Basin Channel, Third Street, Mission Rock Street and San Francisco Bay; (2) adoption of the Mission Rock Parks Plan as required in the Development Agreement. (Resolution No. 19-39)

Request resolution of support for the formation of a nonprofit, "Mission Rock Utilities" entity to operate a District Energy System and Non-Potable Water Plant providing recycled water and thermal energy to Mission Rock residents and commercial tenants. (Resolution No. 19-40)

### **DIRECTOR'S RECOMMENDATION: Approve the Attached Resolutions**

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#### **Executive Summary**

On January 30, 2018, the Port Commission approved a mixed-use development project known as Mission Rock at Seawall Lot 337 and Pier 48 (the "Project"). Subsequently, on February 13, 2018, the San Francisco Board of Supervisors approved the Project and on August 15, 2018 the Port and Seawall Lot 337 Associates signed all Project-related documents.

The Port's partner for development of the Project is Seawall Lot 337 Associates, LLC ("Developer"), an affiliate of the San Francisco Giants and Tishman Speyer. The Project's development is governed by the Disposition and Development Agreement ("DDA") and related agreements between the Port and the Developer. Consistent with the requirements of the DDA, the Developer submitted a Phase Submittal for Phase I of the Project, which was summarized in a memorandum for the July 9, 2019 Port Commission informational hearing. This memorandum provides detailed analysis of the

proposed Phase Budget and Parks Plan, which were also summarized and presented as part of the September 10, 2019 Port Commission informational hearing.

Based upon Port staff and consultant team's analysis, Port staff recommend that the Port Commission adopt the following resolutions:

- **Resolution approving the Phase 1 Budget, directing staff to pursue implementing actions, and approving the Mission Rock Parks Plan.**

The Phase 1 Budget is \$145,427,289. Pursuant to the Mission Rock Development and Disposition Agreement (adopted by Port Commission Resolution No. 18-03), the Developer must achieve approval of each phase budget by the Port Commission prior to making expenditures on Project hard costs (in addition, Developer must secure a variety of regulatory approvals and permits). In order to implement the Phase 1 budget, the resolution directs Port staff to: (1) pursue formation of a Community Facilities District as described in **Table 5**; (2) increase the Mission Rock Jobs Housing Equivalency Fee imposed on non-residential uses to support development of affordable housing at the Project as described in **Exhibit 4**; (3) execute the Affordable Housing Subsidy Plan which provides for the fee revenue transfer described in (2); and allow \$1.7 million in entitlement costs to be deferred for reimbursement until a later phase with no additional accrual of return.

In addition to the Phase 1 Budget, the resolution also approves the Mission Rock Parks Plan. The sitewide Parks Plan sets forth the goals and objectives for the 8 acres of parks and open space at Mission Rock, provides an estimated level of required staffing and maintenance, operations, and programming budget, describes public and private programming and events that may occur onsite, and describes a preferred management approach whereby the Port would seek to enter into a concessions, management, and operations contract with a management entity to execute the vision of the Parks Plan. Any such contract will be the subject of future Port Commission action.

- **Resolution of support for the formation of a nonprofit entity, "Mission Rock Utilities", to operate a District Energy System (DES) and Non-Potable Water Plant (NPWP) providing recycled water and thermal energy to Mission Rock residents and commercial tenants.**

Mission Rock's unique site characteristics offer an opportunity for the neighborhood to pursue district wide, centralized energy and recycled water solutions. After consulting with SFPUC staff, the attached resolution supports the formation of a nonprofit to operate these systems which will be executed through a partnership between the Developer (then, ultimately the Mission Rock Master Association) and a District-scale utility provider. The operator achieving nonprofit status will benefit the Mission Rock project by bringing lower-cost financing to support construction of the two systems, which will allow lower utility rates and lower building operating costs.

On October 5, 2017 By Motion No. 20018, the Planning Commission certified the completion of the Mission Rock Project Final EIR in compliance with requirements of the California Environmental Quality Act (“CEQA”). In connection with project approvals, the Port Commission and the Board of Supervisors each adopted CEQA findings for the Project and approved required mitigation measures and a Mitigation Monitoring and Reporting Program by Port Resolution No. 18-03 (January 30, 2018) and Board Resolution No. 33-18 (March 6, 2018), respectively. The Phase 1 submittal is consistent with the project analyzed in the Final EIR, and the approval of this Phase 1 submittal requires no additional review under CEQA.

This memorandum also provides information on the structure of a proposed Operation, Management, and Concession Agreement (the “Agreement”) between the Port and the Mission Rock nonprofit Master Association to operate the Mission Rock parks and public spaces, including terms related to maintenance, operations, programming, events, and sponsorships. Port staff intend to pursue final negotiations based on Port Commission direction and to return to a subsequent Port Commission meeting with a request for action on a proposed Operation, Management, and Concession Agreement, currently planned for late this fall.

### **Refinements Since Informational Item**

This report includes all the information presented in the staff report for the September 10, 2019 Port Commission informational hearing on the Mission Rock Phase 1 Budget Submittal, Parks Plan, and Parks and Public Space Operation, Management, and Concession Agreement. Additional information and refinements to the Phase 1 informational item are shown in underline.

Since the informational item Port staff have presented information about the Phase 1 Budget, Parks Plan, and Operation, Management, and Concession Agreement at the September 2018 meetings of CWAG and NEWAG. Staff will present both items at the September 25<sup>th</sup> SWAC meeting.

### **Report Description**

The staff analysis in this report includes the following components:

- I. Project Background
- II. Project Status
- III. Phase Budget
- IV. Phase 1 Budget Analysis and Total Project Analysis
- V. Criteria for Port Commission Approval of Phase 1 Budget
- VI. Key Implementing Actions for Phase 1 Budget Approval
- VII. Parks Plan
- VIII. Next Steps



## **I. Project Background**

The entitled Mission Rock project anticipates approximately 1,200 units of new, rental housing, 1.4 million square feet of new commercial and office space, and rehabilitation of historic Pier 48, as well as space for small-scale manufacturing, retail and neighborhood services, waterfront parks, and public infrastructure. The Mission Rock mixed-use project is located at Seawall Lot (“SWL”) 337 and Pier 48 bound by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay.

The Project approved last year and now on the precipice of construction, represents 11 years of effort, led by the Port Commission, Port and City staff, and the Developer. These efforts include State legislation; neighborhood planning and neighborhood outreach; infrastructure planning and design; shoreline and sea level rise resiliency planning; development of a Special Use District; and successful collaborations with regulators and partner agencies related to topics like workforce development, affordable housing, transportation, public access, and park development.

## **II. Project Status**

Following Port Commission approval 19 months ago, the Project team secured approvals from the following regulatory entities:

1. Bay Conservation and Development Commission
2. State Lands Commission
3. Board of Supervisors

After securing these approvals, the Port’s development partner, the San Francisco Giants, entered into a partnership agreement with national developer Tishman Speyer to jointly execute the project. The Developer has assembled a comprehensive team of experienced horizontal and vertical development experts and has been working intensely to advance the Project on multiple fronts. Major milestones reached include the following submittals: Tentative Subdivision Map, sitewide Basis of Design, and first submittal of the Street Improvement Permit. Developer also: (a) has conducted a request for proposals process consistent with the requirements of the DDA and selected a general contractor, Granite Construction, to manage Phase 1 infrastructure construction, (b) has retained four architecture firms that have been working collaboratively on the designs of the Phase 1 buildings,<sup>1</sup> and (c) is exceeding the Workforce Development Plan’s 10% local business enterprise (LBE) goal for pre-construction contract expenditures. At the August 7<sup>th</sup> San Francisco Public Works Director’s Hearing, no members of the public commented on the Mission Rock Tentative Map, clearing the way for Tentative Map approval via a Public Works Director’s Order.

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<sup>1</sup> Schematic designs for the buildings are expected to be submitted late this summer or early in the fall.

### III. Phase Budget

With each Phase Submittal the Developer is required to submit a proposed Phase Budget in a form reasonably acceptable to the Port. Each proposal for a Phase Budget will be a refinement of the phase proforma, consistent with the DDA funding goals, project requirements, and budget guidelines (see **Exhibit 1** for DDA Excerpts relevant to the Phase Budget approval). The Phase Budget is required to provide an overview of the expected cost and payment sources for the phase improvements in sufficient detail for the Port to determine consistency with the approved transaction documents. This requirement is intended to provide the Port Commission with an opportunity to understand the feasibility of each phase of the project, prior to approving hard cost expenditures.

Port staff has confirmed the Phase 1 Budget is complete pursuant to the requirements in the DDA and has found it to be consistent with the Funding Goals, Project Requirements and Budget Guidelines.

The Phase 1 budget is made up of:

- **Project Costs:** projected hard and soft costs and return on Developer equity.
- **Project Revenues:** revenues from
  - the four, Phase 1 prepaid leases and
  - public financing sources, including:
    - Community Facilities District (CFD) bond proceeds
    - CFD paygo (i.e., CFD taxes not dedicated to bond debt service)
    - Infrastructure Financing District (IFD) paygo (i.e., IFD taxes not dedicated to bond debt service)

The Phase 1 program is illustrated in **Figure 1** below. As staff described during the July 9 Port Commission meeting item on Mission Rock, the Phase 1 program includes China Basin Park, a new east-west street from 3<sup>rd</sup> Street to Terry Francois, two new north-south streets, and parcels A (residential), B (commercial), F (residential), and G (commercial). The proposed Phase 1 is a change from the anticipated Phase 1 at approvals as it swaps parcel F into Phase 1 and moves parcel K to a later phase. The Developer proposed replacing parcel K with parcel F in order to increase the number of housing units in Phase 1 and to enhance placemaking through the creation of a fully built-out intersection at Shared Public Way and Exposition Street. As described during the July 9 meeting, Port staff evaluated the proposed change in phasing from the original Phase 1 and found that it meets the criteria in the DDA that Port staff must consider in approving the boundary change.

Port staff reviewed the Phase Submittal in conjunction with staff from City Planning San Francisco Metropolitan Transportation Agency (SFMTA), and Mayor's Office of Housing and Community Development (MOHCD). City Planning and SFMTA provided requests for clarifications to improve the Phase Submittal. Pursuant to MOHCD's status as Port's advisor relative to the Housing Plan attached to the DDA, MOHCD reviewed the proposed

inclusionary housing program in detail (see **Exhibit 7** which includes a housing data table). Port staff, in consultation with MOHCD, found that the provision of below market rate units for Phase 1 meets the requirements of the Mission Rock Housing Plan.

Phase 1 includes the following estimated program elements<sup>2</sup>:

- 560 apartment units
  - 202 of which are below market rate units
- 550,000 gross square feet office
- 65,000 gross square feet of retail
- 5.5 acres of parks and open space
- District energy system located in Parcel A which will serve all of Mission Rock
- District scale Non-Potable Water Plant located in Parcel B which will serve all of Mission Rock's recycled water needs

Key public benefits including affordable housing, parks and open space, sustainability strategy goals, and workforce and local hire meet or exceed those required in the DDA and the Development Agreement.

The Phase 1 Budget sources and uses are summarized in **Table 1**.

**Figure 1. Original and Proposed Phase 1**



<sup>2</sup> Note these program elements are estimated based on preliminary building designs and infrastructure layout. Actual buildings and the exact size of parks and open space will vary as construction documents are finalized through the permit review process.

Table 1. Phase 1 Overview of Sources and Uses\*

Phase 1 Budget (\$ millions)			
Description	Entitlement	Phase 1	Total Phase
Total Horizontal Costs	29.3	145.4	174.8
Developer Return*	<u>16.9</u>	<u>73.8</u>	<u>90.7</u>
<b>Total Phase 1 Uses</b>	<b>46.2</b>	<b>219.3</b>	<b>265.5</b>
Net Development Rights Payments	42.2	-	42.2
CFD Bonds - Unimproved Land	4.0	31.2	35.2
CFD Bonds - Completed Buildings	-	140.8	140.8
CFD Excess Pay Go Increment	<u>-</u>	<u>47.2</u>	<u>47.2</u>
<b>Total Phase 1 Project Sources</b>	<b>46.2</b>	<b>219.3</b>	<b>265.5</b>

\*Numbers in table are rounded and thus may not appear to sum precisely.

## Project Costs

### Summary of Costs and Construction Timeline

The Developer's Phase 1 budget includes an estimated \$89.7 million in hard costs and \$55.7 million in soft costs for a horizontal development cost estimate of \$145.4 million, as summarized in **Table 2** below. The Developer's Phase 1 budget also includes \$29.3 million in entitlement costs, which reflects the final, audited entitlement costs. Together, entitlement and Phase 1 horizontal costs total \$174.8 million.

Table 2. Total Phase 1 Development Budget and Changes Since Project Approval

Cost Item	Current Phase 1 Budget	January 2018 Budget \$ (millions)	Variance \$ (millions)	Variance (%)
<b>Entitlement</b>	29.3	29		
<b>Hard Costs</b>				
China Basin Park	27.4	16.8	10.6	63%
Other Direct Cost (streets, utilities, etc.)	37.7	30.4	7.3	24%
Fee, Insurance, GCs, GMP Contingency	15	16.5	(1.5)	-9%
<b>Total GMP Hard Costs</b>	<b>80.1</b>	<b>63.7</b>	<b>16.4</b>	<b>26%</b>
Owner Direct + Owner Contingency	9.7	5.9	3.8	64%
<b>Total Hard Costs</b>	<b>89.8</b>	<b>69.6</b>	<b>20.2</b>	<b>29%</b>
<b>Total Soft Costs</b>	<b>55.7</b>	<b>26.7</b>	<b>29.0</b>	<b>109%</b>
<b>Total Phase 1 Budget Horizontal Cost</b>	<b>145.4</b>	<b>96.3</b>	<b>49.1</b>	<b>51%</b>
<b>Total Phase 1 Budget w/ Entitlement</b>	<b>174.8</b>			

The Phase 1 horizontal construction schedule is estimated to take 24 months, beginning from construction commencement. The outside date for completion of construction is 5

years. Developer must seek Port Commission approval to extend the construction schedule beyond 5 years.<sup>3</sup>

### Analysis of Phase 1 Costs

Port staff and the Port's consultants have conducted the following due diligence related to the Phase 1 costs and have concluded that the costs meet the DDA requirement for "reasonable projections". The due diligence and information supporting this conclusion includes:

- **Competitive bid.** Pursuant to the requirement set forth in the DDA that the developer solicit competitive bids, the Developer identified seven qualified general contractors before issuing a Request for Qualifications to each firm. Five of these firms were sent a Request for Proposal leading to interviews with each firm and the shortlisting of three firms which were interviewed a second time. From this competitive bid process, the Developer retained Granite Construction as the Mission Rock Phase 1 horizontal construction firm.<sup>4</sup>
- **Third-party review.** The Port retained M. Lee Corporation, a San Francisco-based cost estimating firm, to conduct a line-by-line analysis of the Developer's initial Phase 1 horizontal hard costs. While the Port's consultant raised questions on some line items, the review concluded the Developer's estimate of horizontal development hard costs to be commercially reasonable and consistent with project requirements. The consultant is now reviewing the Developer's final Phase 1 horizontal hard costs to confirm all revisions are commercially reasonable.
- **Compliance with DDA cost caps.** The DDA caps construction management fees, project management costs, and asset management costs at 15% of hard costs. The Phase Budget line items associated with this specific list are consistent with these DDA requirements.
- **Entitlement costs verified.** Following approvals in August 2018, the Port's consultant (JHS CPAs) conducted a detailed review of all entitlement costs to confirm actual payment of allowable entitlement expenditures. The Port's consultant under staff direction has verified that these costs are accurate and reimbursable entitlement expenditures.

### Phase 1 Budget Costs: Takeaways

As noted above, the standard for approval of the Phase 1 costs is a "reasonable projections" standard. The due diligence summarized above supports the reasonableness of the Phase 1 costs. While these costs in **Table 1** are "reasonable", they are \$49.1 million above costs projected in January 2018. At project approvals in January 2018, the total Phase 1 horizontal development cost was estimated to be \$96.3 million (including

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<sup>3</sup> Unless the Developer can demonstrate an "excusable delay" – such as litigation – has caused a schedule delay.

<sup>4</sup> If the Phase 1 budget is approved by the Port Commission, the Developer can enter a Guaranteed Maximum Price (GMP) contract with the company.

estimate for inflation), versus \$145.4 million in the updated Phase 1 Budget. Including the entitlement costs, Phase 1 horizontal costs total \$174.8 million as compared to \$125.3 million at project approvals. Of this \$49.1 million overall budget increase, \$16.4 million is attributable to hard cost increase and \$29.0 million is attributable to soft costs increase.

The key differences and drivers of the substantial increase to the Phase 1 horizontal development budget are summarized below.

- **Heated construction cost environment.** The high cost of construction and the pace of construction inflation is well-documented in San Francisco. With a strong economy and a substantial pipeline of private and public projects, construction costs have been difficult to project in the absence of a formal bid process.
- **Increases to hard and soft costs** Hard costs for certain Phase 1 horizontal elements have increased since approvals as they have been updated to incorporate required changes or to reflect new design specifications. For example, the budget for parks and open space has increased from \$16.8 million to \$27.4 million, an increase of 63%. In addition to general construction cost escalation, the current park schematic design includes extensive shoreline improvements and other features not in the original concept design which will significantly enhance the recreational value and user experience of the park, but also add cost. Soft costs have also increased from 29% of the proposed Phase 1 budget at approvals (a figure derived via formula as 25% of projected hard costs) to 38% of the Phase 1 budget based on actual costs paid to date and projected spend based on actual committed contracts and estimates from consultants.

The Phase 1 Budget costs incorporate a number of cost-cutting measures to mitigate as much as possible the relatively high costs of Phase 1. These include shifting a park element to Phase 2 (boat launch will be in later phase while less expensive water access via ramp is still included in Phase 1) and allowing for portions of the District Energy System (DES) and Non-Potable Water Plant (NPWP) costs to be financed by the nonprofit district utilities manager in Phase 1.

It is also important to note that the use of Lightweight Cellular Concrete (LCC)<sup>5</sup> as the ground improvement technique to support utilities and streets – as opposed to the pile-supported streets solution - is a difference from the January 2018 Phase 1 projected budget.

The project's Infrastructure Plan and companion documents required a technical committee – made up of members from the Port, Public Works, SFPUC, and the Developer to develop design criteria for the streets. That work identified code and performance issues with pile-supported streets. Also, cost estimates for pile-supported

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<sup>5</sup> Lightweight cellular concrete, also referred to as foam concrete or Lightweight Fill is being used to mitigate settlement in the streets which would otherwise occur when the existing street grade is raised four to five feet to protect against sea level rise. Existing soil is removed to a depth of eight to ten feet and replaced with LCC which is approximately a quarter of the density of soil, significantly reducing the weight of the raised streets.

streets more than doubled upon development of detailed engineering criteria. This prompted reconsideration of other techniques to mitigate street settlement, including deep soil mixing (DSM), LCC and surcharge. This technical team determined that LCC is a technically sound solution in terms construction cost, low geotechnical risk, low environmental impacts, and long-term serviceability.

The initial installation and ongoing maintenance of LCC has been approved by the City based on terms negotiated between the Port, the Developer and the City's Infrastructure Task Force subject to additional due diligence, testing, peer review, insurance, and extended warranties. These discussions resulted in proposed agreements to distribute upfront and ongoing costs and risks, including: (1) project will fund all upfront costs, including peer review, performance mock-up, and warranty costs; (2) LCC will be approved in future phases if

performance is demonstrated through previous phases; (3) the Management Entity for the site will fund backfilling for trenches in LCC streets; (4) CFD and IFD may be used to fund repairs for a period of 10 years after LCC warranty lapses; and (5) SFPUC accepts public utilities and Public Works accepts streets at site.

**Figure 2. LCC use at Oakland 12th Street Project near Lake Merritt.**



### Returns on Costs Funded by Equity

Under the terms of the DDA, both the Developer and the Port may invest at-risk capital to fund project costs. While the Port may elect to make this investment, the Developer must fund horizontal costs with Developer equity, if public financing or land proceeds are not available. Developer equity invested in the project receives the higher of an 18% annual return and 1.5 times the peak equity invested in a phase (called a "1.5 multiple"). Port capital receives a 10% annual return. Both Developer and Port investments receive equal priority in terms of repayment, meaning that as public financing sources are available to pay off equity invested plus return, those sources are prioritized to repay equity invested, no matter which party made the investment.

Port staff recommend making no capital commitment at this time but will evaluate an investment during the capital planning process later in the year. If the Port forgoes a Port capital investment, Port revenues from this project will be derived primarily from ground rent from parcels in subsequent phases and outyear CFD and tax increment. This is the same structure as was projected at project approvals, in which Phase 1 costs require all available Phase 1 revenue sources (other than outyear sources).



The Phase Budget projects Developer peak equity invested in Phase 1 development costs to be \$86.4 million with a return on this investment of \$73.8 million, equal to an 18% return and a 1.85 multiple on the investment. **Table 3** summarizes these key Developer metrics, compared with those projected at approvals.

**Table 3. Developer Metrics, Phase 1 Budget versus Projected at Phase 1 approvals**

Item	Project Approvals	Current Phase 1 Submission
Peak Equity (millions)	\$37.4 m	\$86.4 m
Return to Equity (millions)	\$38.5 m	\$73.8 m
IRR	18.0%	18.0%
Multiple	2.03x	1.85x

## Project Revenues

### Summary of Revenues

The Phase 1 Budget revenues include \$42.2 million in net prepaid lease land value for the four Phase 1 parcels and \$223.2 million in CFD bond proceeds and paygo for total project sources of 265.5 million (numbers do not sum exactly because of rounding).

### *Revenues: Development Rights Payments*

As reported at the July 9, 2019 Port Commission information item, the four development pads proposed for Phase 1 are parcels A, B, F, and G. Parcels A and F are primarily residential while Parcels B and G are office/commercial.

Fair Market Value for Parcels A, B, F, and G was established by the appraisal process outlined by the DDA. The DDA procedures require that an appraiser from the DDA-established pool of joint appraisers be retained by the Developer and the Port to conduct an appraisal, pursuant to the DDA-approved joint appraisal instructions. In addition to the joint appraiser (Newmark, Knight, Frank) that worked under the direction of the Developer and the Port, the Port separately retained peer review and advisory services from a locally-based appraiser, Runde & Associates. The appraisal process resulted in a fair market valuation of \$43 million for the four parcels.

It is important to note that this valuation relies upon two proposed Port Commission action items which are described below: (1) approval of a minimum, Phase-specific Jobs Housing Equivalency Fee which is higher than anywhere else in the City and (2) approval of CFD tax rates higher than the taxes projected at project approvals.

This valuation has been accepted by the Developer, which plans to exercise its option to act as a Vertical Developer under the vertical DDA terms outlines in the DDA. **Table 4** summarizes the appraised values for the four parcels, which represent the Development Rights Payments for Phase 1.

**Table 4. Summary of Appraised Values**

Item	Parcel			
	A	B	F	G
<b>Parcel Size (SF)</b>	43,413	41,101	25,110	33,055
<b>Residential Unit Count</b>	294	0	266	0
<b>BMR Residential Unit Count</b>	118		106	
<b>Office SF</b>	48,969	265,205	0	270,241
<b>Total SF</b>	393,869	281,639	314,508	303,011
<b>Appraised Value of 75-year Prepaid Lease (\$ millions)</b>	11.3	4.0	23.7	4.0
<b>*Mission Rock Minimum Jobs Housing Equivalency Fee (\$ millions)<sup>6</sup></b>	59.7	(74.9)	75.6	(60.4)

\*A negative value indicates that the Parcel is paying the JHEF amount; a positive value means the parcel receives JHEF subsidy. See **Exhibit 3** for further information on BMR units, including illustration of rental rates.

### *Public Financing*

As anticipated at approvals, the majority of Phase 1 Project sources rely on public financing. These public financing sources are derived from CFD bonds and paygo revenue. The Port will use a combination of CFD Special Taxes (which are special taxes assessed above the typical 1% property tax rate) and IFD tax increment to support the issuance of CFD bonds. A combination of unimproved land bonds and Phase 1 building bonds indicate public financing proceeds and paygo revenue of \$223.2 million. The public financing revenue is based on CFD tax rates equal to those summarized in **Table 5**.

Port staff reviewed the CFD bond projections along with a third-party consultant (Economic & Planning Systems) and the City’s Office of Public Finance. The Phase 1 public financing has increased from revenue anticipated at approvals from \$170.4 to \$223.2 million. This significant increase is the result of: (1) increases in tax increment from the project, due in part to anticipated higher assessed values based on higher construction costs (this increase will be captured by increasing the CFD tax, sized to match tax increment), (2) restructuring of return eligibility requirements to be reimbursed by bond revenue, and (3) lower interest rates as compared to those assumed at project approval.

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<sup>6</sup> Note this Fee is significantly higher than the Jobs Housing Linkage Fee in San Francisco. The Phase 1 budget Port Commission approvals contemplated in this memorandum set the minimum Mission Rock fee at this relatively high level in order to facilitate a land value transfer from office parcels to residential parcels so that the residential parcels offer a feasible investment.

## IV. Phase 1 Budget Analysis and Total Project Analysis

### Phase 1 Projections Are Balanced

In consultation with the Port's third-party consultant EPS, Port staff have found that the costs and revenues are balanced in the Phase 1 Budget in the Developer's current underwriting. This 'balance' means that the project revenues are sufficient to pay for the project costs.

### Risks to Phase 1 Balancing and Risks to Future Phase Sources

While the Phase 1 budget balances, it is dependent on various schedules and projections that are subject to uncertainty. A significant change in any of the factors described below could have an adverse effect on the ability of Phase 1 to balance sources and uses.

- **Land value.** The Phase 1 budget includes revenues from the site in the form of \$43 million in appraiser-determined, fair market, prepaid lease land value for the four Phase 1 parcels. The approved DDA provides the Developer the option to proceed with horizontal, hard cost spending, in advance of execution of parcel leases. The Port and Developer propose a safeguard for this prepaid lease revenue for Phase 1, whereby the Developer may only begin spending on horizontal hard costs once all four Phase 1 parcel leases have closed. This provides a significant one-time source of funds to Phase 1 and avoids potential cash flow issues that could arise by exercising parcel options separately.
- **Special tax rates and public financing environment.** The majority of Phase 1 sources rely on public financing. The projected level of public financing assumes the CFD tax rates are approved by the Port Commission and Board of Supervisors and CFD bonds are marketable at an estimated interest rate. The interest rate assumed for bonds has been developed with input from a team of public finance experts,<sup>7</sup> however, if the CFD tax rates are delayed or if the cost of public debt increases it could adversely impact project sources for this phase.
- **Bond timing and amounts.** The phase 1 timeline assumes a relatively fast pace of bond issuance. This timeline is reasonable according to the Port's economic and public financing consultants as well as the City's Office of Public Finance, assuming both the City and the Developer are motivated to proceed expeditiously. However, lengthy bond issuance delays because of administrative or other factors could negatively affect the performance of Phase 1. In addition to CFD debt secured by vertical improvements, the Developer's underwriting assumes a \$40 million land-secured bond. The timing and amount of this revenue is critical to making Phase 1 work.

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<sup>7</sup> The Port is aided by a public finance consultant, a CFD special tax administrative specialist, and a bond underwriter, in addition to staff from the City's Office of Public Finance

- **Cost control.** Construction costs around the Bay Area have increased steadily over the life of the project. The Phase 1 Budget includes soft and hard cost estimates that represent a significant increase from the term sheet and project approvals. These cost projections have been found to be reasonable in light of a very expensive construction environment and significant regional demand for labor and materials. However, if costs continue to increase it may require increased use of Developer capital, which would be subject to the alternative (lower) return described in the DDA for Phase 1. To control the cost environment, the Developer is moving quickly to select a General Contractor and enter into a Guaranteed Maximum Price contract. This would provide an increased level of certainty around the cost environment.

### Overall Project Returns to Port

The main drivers of changes to Port Revenues since approval are: (1) public financing since bonding capacity, interest rate, and implementation changes all resulted in increased bond proceeds, (2) construction cost increases on horizontal and vertical development, which result in more preferred return to the Developer and decreases to land value, and (3) changes to the development program and phasing structure, which among other changes, increase residential and office square footage in Phase 1. That said, the changes to the Port's revenue since those projected at approvals are relatively small, showing a slight increase in projected Port revenues.

- **Port Revenue.** The returns to the Port from Phase 1 are generally equivalent to those anticipated at project approvals. Just as at project approvals, all four of the parcel leases are prepaid leases and Shoreline CFD taxes are reinvested in the Phase 1 horizontal project costs. Across all four phases of the project, the latest projections indicate that the Port will receive \$190 million in NPV terms over the life of the project as compared to \$198 million at project approval. Port revenues are composed of unrestricted and restricted ground rent, participation (percentage rent from parcel leases, participation in refinancing and sale of leases, and transfer taxes), tax increment and other special taxes, and resiliency special tax dedicated to shoreline needs. **Exhibit 2** provides further information on projected revenue.
- **Port Capital Advances.** The Port Commission has the option to invest Port Capital into the project and to earn a 10% cumulative annual return, compounded quarterly, on this investment. Investment of Port Capital would increase Port's return from the Project, concurrent with the Developer's returns. Staff do not recommend that the Port Commission commit to use Port Capital to fund Phase Improvements at this time. Instead, Staff will consider the option to make such an investment in relation to all other requests for Port Capital funding as part of the 2021-2025 Five Year Capital Improvement Program, which is being finalized in early 2020. Should funds become available, Staff will confer with the Developer and return to the Port Commission for approval of such an investment.

## V. Criteria for Commission Approval of Phase 1 Budget

The DDA sets forth the Port Commission's criteria in reviewing the phase Budget as follows:

**“Criteria for Approval.** The Port Commission will approve the Phase Budget or modification if it reasonably finds that the Phase Budget or modification:

- (i) is consistent with the Funding Goals and Project Requirements and satisfies the Budget Guidelines;
- (ii) is based on reasonable projections;
- (iii) provides for sources sufficient to fund the Phase and any carryover from Prior Phases;
- (iv) would not adversely affect Project Payment Sources available to satisfy the Project Payment Obligation for any Later Phases and the Project as a whole; and
- (v) would not impair the Port's fiduciary obligations under Applicable Port Laws.

Port staff, along with the team members mentioned elsewhere in this memorandum, have reviewed the Phase 1 budget submission and found the submission complies with the conditions prescribed by the DDA. These criteria are addressed in order below:

- (i) Staff and the Port's third-party consultant team have reviewed the Phase 1 submission and found it to be in compliance with the funding goals, requirements and budget guidelines as described by the DDA.
- (ii) Staff, the Port's third-party economic consultant, and the Port's cost estimate reviewing consultant have reviewed the Phase 1 budget project cost and return projections and have found them to be reasonable and with sufficient allowance for inflation and contractor contingencies (see Exhibits 8 and 9 for memoranda).
- (iii) Staff and the Port's third-party economic consultants have concluded that the Phase 1 budget provides for sources sufficient to fund the Phase. However, the viability of subsequent phases is subject to interest rate risk, market and development risk, and continued construction cost escalation. The Phase 1 budget shows significant cost escalation as compared to project approvals, partially offset by a favorable interest rate environment. If cost escalation continues or if the cost of public debt goes up, it may require the use of project sources to balance costs in subsequent phases. This would adversely affect payment sources in those phases and the Port's financial position. Those future phases though, are subject to Port Commission approval.

- (iv) Staff and the Port's third-party economic consultant have determined that the proposed Phase 1 budget would not adversely affect Project Payment Sources available to satisfy the Project Payment Obligation for any Later Phases and the Project as a whole based on the Developer's underwriting, subject to the caveats described in criteria (iii) above.
- (v) The proposed Phase 1 budget would not impair the Port's fiduciary obligations under Applicable Port Laws. No City General Funds or Port Harbor Funds are pledged or made liable under this Phase 1 Budget. If Project sources are insufficient to cover costs the remainder will carryover into the next phase submittal.

### **Effect of Commission Approval of Phase Budget**

Port Commission Approval of the Phase 1 budget will:

- (i) establish the outside date for the Developer to complete Phase 1 improvements which is 5 years after construction commencement,
- (ii) obligate the Port to submit a Fiscal Year budget consistent with the Phase Budget,
- (iii) authorize the Chief Harbor Engineer (CHE) and the Director of Public Works to issue relevant construction permits,
- (iv) establish the upper limit of Developer spending that is eligible for reimbursement at the 18 percent developer return rate for Phase 1 equal to \$145,427,289, and
- (v) add a condition that all four Phase 1 parcels must be conveyed to a vertical developer before the Port will be authorized to issue a notice to proceed to Developer to begin horizontal construction.

Approval of a phase budget that includes any Port Capital advances would also serve as a binding commitment to invest Port capital in the project. However, since the Phase 1 budget does presently not include Port capital advances, this commitment is not relevant at this time.

## **VI. Key Implementing Actions for Phase 1 Budget Approval**

In addition to approval of the Phase 1 Budget, the Phase 1 Budget relies on the below implementing actions. These actions were either explicitly contemplated in the DDA or are allowed in the DDA.



## **Affordable Housing Subsidy Plan and Jobs Housing Equivalency Fee**

The DDA requires that the Port Commission, as part of the Phase 1 Budget approval, also approve an Affordable Housing Subsidy Plan (AHSP) which sets forth the process the Port will use to allocate Jobs Housing Equivalency Fees (JHEFs) collected from commercial uses in a phase to the provision of affordable housing in the same phase. The DDA allows the Port Commission to set the minimum Mission Rock JHEF and the Development Agreement requires that the Port set minimum fees per parcel which must be paid, regardless of the number of actual square feet that are ultimately developed on the parcel.

The proposed Phase 1 Affordable Housing Subsidy Plan requires that Phase 1 office projects pay the JHEF when the first building permit is issued. The two Phase 1 residential projects will request a proportionate share of the JHEF when the residential building foundations have been completed. The proportionate share will be based upon each parcels provision of BMR units, by affordability level. If the residential projects proceed in advance of the office projects, the office projects will be required to pay the JHEF in advance of their first building permit.

The Developer has proposed that the Port increase the JHEF above the minimum required in the project's Development Agreement. Specifically, the Phase 1 Budget includes between \$74.9 million and \$90.2 million in fees from commercial Parcel B and between \$60.4 million and \$91.1 million in fees from commercial Parcel G; all fees will go to fund development of BMR units in Parcels A and F. The low end of these ranges represent the minimum fees which must be paid by Parcel B and Parcel G developers. This fee level was the assumed fee level in the appraised values of the sites. The Developer has proposed to increase the fees paid up to the \$90.2 million and \$91.1 million values described above, with no reduction in the value of the office land. Port staff are supportive of providing a subsidy to BMR units within the proposed range.

## **Entitlement Cost Allocation to Subsequent Phases**

The Developer incurred \$29.3 million in entitlement costs. These costs were subject to the 18 percent developer return and accrued interest until entitlements were achieved, at which point interest and return were frozen. With the 18% return, the entitlement sum is \$47.9 million. The Developer has proposed that \$1.7 million of this amount be repaid in a subsequent project phase. As this amount no longer accrues interest, this helps the project's economics and will not greatly impact project payment sources in later phases and as a result Port staff are supportive of this request. In addition, each subsequent phase budget is subject to Port Commission's approval, providing the Commission an opportunity to evaluate the impact of the inclusion of these costs through the review and approval of later phase budget submittals.

## **CFD Tax Rates**

Tax increment from the project has increased due in part to anticipated higher assessed values based on higher construction costs. This increase is further captured by increasing the CFD tax rates, which are sized to match the projected tax increment. **Table 5** describes the new CFD tax rates as compared to January 2018 project approvals.

**Table 5. CFD Special Tax Rates – Current Rates vs. Project Approvals**

Item	Current Special Tax Rates		Approvals Special Tax Rates	
	Office	Market Rate Residential	Office	Market Rate Residential
Development Tax	\$6.50	\$8.58	\$4.01	\$6.54
Office Special Tax		n/a		n/a
Phase 1	\$1.92		\$2.17	
Phases 2-4	\$1.61		\$1.55	
Shoreline Resiliency Tax	\$1.82	n/a	\$0.62	\$1.01
Operating CFD Tax	\$1.40	\$1.15	\$1.35	\$1.11

**District Energy System and Non-Potable Water Plant Managed by Third-Party**

Mission Rock’s unique site characteristics offer an opportunity for the neighborhood to pursue district wide, centralized energy and recycled water solutions. Phase 1 will include two key elements of the Infrastructure and Sustainability Plans: a Central District Energy System and a District scale Non-Potable Water Plant located in Parcel A and B respectively. Though located in just two of the Project’s 11 total buildings, these facilities will serve the entire Mission Rock site freeing up valuable space in the other nine buildings for more productive uses.

For a variety of reasons including size (systems are relatively small from SFPUC’s perspective, serving only Mission Rock) and ongoing costs (rental costs for space within Parcels A and B), SFPUC will not operate these systems. SFPUC has encouraged the project team to integrate these District-scale elements in order to achieve Sustainability Goals.<sup>8</sup>

After consulting with SFPUC staff, Port staff support nonprofit management of these systems. The Developer proposes to partner with a District-scale utility provider to form a nonprofit, “Mission Rock Utilities”, to provide thermal energy and recycled water services to customers within Mission Rock through the design and construction of a new district energy system and black water recycling system. The operator achieving nonprofit status will benefit the Mission Rock project by bringing lower-cost financing to support construction of the two systems, which translates into lower utility rates and lower building operating costs. Attached as part of this memorandum is a resolution of support for nonprofit formation for Port Commission consideration.

<sup>8</sup> The overall cost impact of these systems does not have a negative effect on the Phase 1 Budget. This is because costs which could have been funded by public financing sources have instead been allocated to the nonprofit DES and NPWP operator. Privately financing these systems frees up scarce public finance dollars to repay more expensive Developer equity.

## VII. Parks Plan

The Project DDA and the DA require that the Port Commission adopt a Parks Plan for Mission Rock open spaces. The *Parks Plan* (see **Exhibit 5**) was submitted as part of the Phase 1 Submittal and aims to create a framework for the management and regulation of the public parks and open spaces at Mission Rock. This memorandum describes and seeks approval of the Mission Rock Parks Plan. Port staff anticipate presenting a Parks Operation, Management, and Concession Agreement for consideration in a subsequent Port Commission meeting.

Additionally, the Port Commission will also have an opportunity to review the Schematic Design of China Basin Park this fall and the Developer will host a public presentation of its design prior to submittal of Schematic Design Application for review by the Southern Waterfront Design Advisory Committee.

The Parks Plan consists of the following sections: Goals and Objectives, Overview of Spaces, Park Rules and Standards, Management Entity, Operations and Management, Concessions, Programming and Activation, Event Definitions and Limitations, Approvals and Permitting, and Budget and Funding. The below sections describe key sections of the Parks Plan.

### **Management Approach**

The Port partnering with a single Management Entity would facilitate day-to-day management of the Mission Rock Parks and Open Spaces. This approach allows for activation of the Mission Rock Parks, focused, on-site management, and immediate-neighborhood engagement. This approach also allows the Port to retain control of the Parks and Open Spaces through a management contract, while ensuring that the spaces remain public, welcoming, and inviting to all. A partnering approach allows for cohesive and collaborative management, while leveraging outside investment to ensure that Port Parks and Open Spaces provide broad public access and a robust public activation program.

Later in the Fall, Port Staff will present for Port Commission review the proposed Operation, Management, and Concession Agreement (the “Agreement”) between Mission Rock Master Developer and the Port. The proposed Agreement will be a contract between the Port and the Mission Rock Management Entity for the Management Entity to provide parks and open space operations, maintenance, programming, and activation services.

### **Goals and Objectives**

The goals of the Parks Plan are as follows:

- Deliver vibrant, well-managed, and beautiful parks and open space that will be activated and well-used, with a variety of public programming and amenities to enhance the appeal of parks and open space to all.

- Generate and maintain real estate value at the Port.
- Aim for financial viability by controlling operating expenses and generating revenues, making the parks and open space as financially self-sufficient as possible.
- Form a governance structure for the parks and open space to clearly assign and coordinate decision-making and operating responsibilities among the various public and private entities, foster responsiveness to stakeholder concerns, and sustain the success of the parks and open space in perpetuity.

The objectives of the Parks Plan are as follows:

- Manage and maintain parks and open space parks and streets to world-class standards, in a way that is consistent with or exceeds other open spaces throughout San Francisco.
- Provide parks and open space that are safe, secure, welcoming, and always feel public to all residents and visitors.
- Activate parks and open space public realm with events and activities to create a vibrant and safe environment at all times of the day and throughout the week and the year.
- Create a parks and open space public realm that meets the needs of the neighborhood and appeals and attracts a diverse audience beyond the borders of the neighborhood.
- Create a parks and open space public realm that generates public benefit for the greater community and the region.
- Engage the waterfront and create a great place to be along the waterfront.
- Establish a public realm that balances maintenance expenses with open space revenue generation to achieve long-term financial sustainability.
- Comply with Waterfront Plan policies as amended from time to time.

### **Overview of Spaces**

The parks and open space network will be a fundamental part of the urban design and definition of the Mission Rock Neighborhood. Five public spaces, located along the waterfront and at the core of Mission Rock, will provide a comprehensive variety of recreational opportunities. Mission Rock will include this network of waterfront public spaces:

- |                       |                                   |
|-----------------------|-----------------------------------|
| ▪ China Basin Park    | ▪ Channel Street and Channel Lane |
| ▪ Mission Rock Square | ▪ Pier 48 Apron                   |
| ▪ Channel Wharf       |                                   |

These public spaces will be designed to take advantage of views, access to the waterfront, sunshine, and adjacent active ground-floor uses. The arrangement of these public spaces will also establish destinations within the neighborhood that anchor the public realm. These destinations will maximize the variety of landscape-based experiences and create memorable landmarks within Mission Rock's pedestrian network. Public spaces at Mission Rock will be consistent with Public Trust Uses and will conform to State Lands Commission and BCDC requirements where applicable. All open spaces will provide active, curated programs to attract visitors and create a lively network of well-loved public spaces along San Francisco's waterfront.

### **Park Rules and Standards**

The Public Spaces shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, boat launching, swimming, and related purposes. Park hours shall be from 6am to 10pm.

Restroom hours from 8am to 8pm. General Public Access may be modified for specified Ticketed Public Events and Private Events, as permitted by the Port. Areas along the Bay Trail/Blue Greenway and major pedestrian and bicycle routes will remain open or be re-routed in the case of construction, maintenance, or special events to allow for pedestrian and bicycle thru traffic and circulation at all times. The Plan outlines prohibited activities and details how the public will be informed and engaged on park activities and management.

### **Management Entity**

Under an agreement to be reviewed and approved by the Port Commission at a future hearing, the Management Entity shall be the Port's exclusive operator, manager, and concessionaire for the Public Spaces. The Management Entity will be responsible for interfacing with the public. The Management Entity will be a nonprofit entity, governed by a Board of Directors and led by a General Manger. Responsibilities for operations, management, and concessions of the Public Spaces may include, but are not limited to:

- Updating annual operations and management plans and schedules
- Updating annual operating budgets
- Generation of revenue for the operations, management, programming, and activation of the public spaces
- Implementing and executing all necessary tasks to successfully operate, manage, program, and activate the public spaces
- Reporting on performance
- Conducting appropriate community outreach and engagement

### **Parks Management**

#### **Operations and Management**

Maintaining appropriate levels of safety, security, and cleanliness along with great amenities are key parts of the operations to ensure Mission Rock's Public Space is world-class. In order to deliver the broad public access and a robust public activation program for all to

enjoy, the Developer has proposed and Port staff agree that the Master Entity will employ approximately eight (8) staff members, that may include the following positions with the following FTE allocations:

**Table 6. Proposed Management Entity – Managerial Staff**

Position	# of Staff	% FTE	Total FTE Allocation
Facilities Engineer	1	50%	50%
Parks & Facilities Director	1	100%	100%
Sitewide General Manager	1	10%	10%
Programming Director	1	100%	100%
Special Events Coordinator	1	100%	100%
Community Relations & Communications Director	1	100%	100%
Programming Hosts/Park Ambassadors	2	100%	200%
<b>TOTAL</b>	<b>8</b>		<b>6.6 FTEs</b>

In addition to the potential management staff listed above, the proposed staffing plans for security, sanitation, and repairs/maintenance, and horticulture and trees are detailed below:

**Table 7. Security Staffing**

Security		# of Staff	% FTE	FTE Allocation
Security Shift 1: 8:00 AM - 4:30 PM	Contractor	2	100%	2.00
Security Shift 2: 4:00 PM - 12:30 AM	Contractor	2	100%	2.00
Security Shift 3: 12:00 AM - 8:30 AM	Contractor	2	100%	2.00
Supervisor	Contractor	1	25%	0.25
<b>TOTAL</b>		<b>7</b>		<b>6.25</b>

**Table 8. Sanitation Staffing**

Sanitation		# of Staff	% FTE	FTE Allocation
Shift 1: 7:00 AM - 3:30 PM	Contractor	2	100%	2.00
Shift 2: 11:30 AM - 8:00 PM	Contractor	2	100%	2.00
Supervisor	Contractor	1	25%	0.25
<b>TOTAL</b>		<b>5</b>		<b>4.25</b>

**Table 9. Horticulture Staffing**

Horticulture/Trees (2x/Wk)		# of Staff	% FTE	FTE Allocation
Shift 1: 7:00 AM - 3:30 PM	Contractor	2	100%	2.00
<b>TOTAL</b>		<b>2</b>		<b>2</b>

**Concessions**

The parks and open space will include opportunities for retail and other concessions. While the Development as a whole will have roughly 200,000 square feet of retail space, the retail and concessions within the parks and open space will total approximately 5,100 square feet. There will be up to two (2) restaurant spaces totaling 3,000-6,000 square feet (contingent upon the number of public restroom facilities), up to four (4) food kiosks of up to 200 square feet each, and one (1) kayak rental kiosk totaling 200 square feet. All concession agreements shall require the use of a point of sale system reasonably approved by the Port.

The Management Entity shall lead all subleasing of the concession space but shall be subject to Port consent requirements. It is anticipated that the Master Entity can generate approximately \$718,000 in annual leasing revenue.

**Programming and Activation**

Programming is a key to the success of the public space network at the site, bringing people to public spaces again and again, and fostering a community sense of ownership of the space. That said, public spaces must also provide ample space for members of the public seeking an “unprogrammed” or quiet contemplation park experience. The Parks Plan proposes adoption of the limitations on programming set forth in the Project’s BCDC Permit which is also consistent with the limitation on park events in the Project’s approved DA. The initial limitations per year include those shown in **Table 10**.

**Table 10. Event Limitations Matrix**

	Public Events			Private Events	Promotional Events
Size	Small	Medium	Large	Small to Medium	Small
Exclusivity	Open to Public (may require ticket or registration)			Not Open to Public (Invitation Only)	Open to Public (no ticket or registration)
China Basin Park	Unlimited free event days	Up to 100 event days per calendar year; no more than 4 weekend days per month; up to 24 can be paid ticketed event days	Not permitted	Up to 18 event days per calendar year throughout (private events are counted toward the 100 medium events)	Up to 50 event days per calendar year; limited to 5,000 SF in total size; no more than 4 locations within a Public Space
Mission Rock Square	Unlimited free event days	Up to 100 event days per calendar year; no more than 6 weekend days per month; up to 24 can be paid event days		Up to 18 event days per calendar year throughout (private events, are counted toward the 100 medium/large events)	Up to 50 event days per calendar year; limited to 5,000 SF in total size; no more than 4 locations within a Public Space

**Event Definitions:**

- Small Event: A single event or related events occupying less than 10,000 square feet in the footprint of a space



- Medium Event: An event occupying more than 10,000 square feet, but less than 30% of the footprint of a space.
- Large Event: An event occupying at least 30%, but no more than 70% of the footprint of a space

Event Conditions:

- The total number of ticketed public and private events shall not exceed the number of free public events in the same fiscal year
- Medium to large events are generally limited in duration of 10 consecutive days including set-up and take-down
- No medium event in China Basin Park may occupy more than 57,500 square feet
- No more than two unrelated small events that collectively occupy more than 10,000 square feet of any given public access area may occur simultaneously

The Management Entity shall lead all special event permitting and will actively program the parks, all programming shall be subject to Port consent requirements. It is anticipated that the Master Entity can generate approximately \$888,000 in annual special events revenue and an additional \$72,000 in annual specialty market revenue for a total of \$960,000.

### Approvals and Permitting

Master Entity shall, at its sole cost and expense, obtain other necessary permits and approvals issued by other governmental agencies. Proof of permits and approvals shall be submitted to the Port for review prior to first day of load in for each event. Parties agree to identifying timelines for submittals of proof of permits and approvals through the approvals and permitting process. Upon the Master Entity’s failure to submit to the Port the necessary permits and approvals by the dates specified in the approvals and permitting process, the Port may, at its sole discretion, terminate this Agreement or disallow any specific event or events.

### Budget and Funding

The Managing Entity will be responsible for generating the revenue to support the public realm’s operations. This relationship would be memorialized through the Operation, Management, and Concession Agreement (the “Agreement”) between Mission Rock Master Developer and the Port. The Agreement would grant the Management Entity control of all net revenue generated in the public spaces, with surplus revenue due to the Port. It is projected that a budget of approximately \$5.1 million will be required to operate, manage, and maintain the Mission Rock Parks and Open Space. **Table 11** below outlines the proposed budget.

It is important to note that this budget provides a robust activation plan and a commensurate level of spending on programming. To the extent these revenues are not achieved, a minimum level of parks and public space maintenance funding will be provided in perpetuity

through CFD maintenance services taxes (once the CFD is formed later this year) and/or through Management Association dues (which will be recorded against each parcel).

**Table 11. Revenue and Expenses**

<b>Projected Revenue</b>	<b>Full Buildout</b>	<b>%</b>
Concessions, Restaurants & Retail	\$ 718,000	15%
Specialty Markets	\$ 72,000	1%
Public Realm Sponsorships	\$ 945,000	19%
Park Event Usage	\$ 888,000	18%
<b>SUBTOTAL</b>	<b>\$ 2,623,000</b>	
CFD or Association Fees	\$ 2,405,757	48%
<b>SUBTOTAL</b>	<b>\$ 2,405,757</b>	
<b>TOTAL</b>	<b>\$ 5,028,757</b>	<b>100%</b>

<b>Projected Expenses</b>	<b>Full Buildout</b>	<b>%</b>
<b>Operations &amp; Maintenance</b>	\$ 1,194,763	24%
<b>Utilities</b>	\$ 530,625	11%
<b>Security</b>	\$ 679,144	14%
<b>Programming</b>	\$ 1,098,300	22%
<b>General &amp; Administration</b>	\$ 697,826	14%
<b>Contingency</b>	\$ 396,997	8%
<b>Annual Reserve</b>	\$ 431,102	9%
<b>TOTAL</b>	<b>\$ 5,028,757</b>	<b>100%</b>

All Revenue (including, but not limited to Association Fees and/or CFD Taxes; Concessions, Restaurants, & Retail; Specialty Markets; Sponsorships; or Other Revenue generated on or through the management of the premises) shall be allocated as follows:

- First to budgeted expenses for operations of the Public Spaces;
- Second to operating reserves; and
- Third to capital repair reserves;
- Fourth, so long as capital repair reserves are sufficiently funded, to Port Harbor Revenue Fund

The parks operations and management budget will be subject to annual Port Commission approval.

**VIII. Next Steps**

Preparing this Phase 1 Budget and Parks Plan required collaboration of numerous parties including from key City agencies (Public Works, SFPUC, OEWD, MOHCD, City Planning, SFMTA, and Office of Public Finance, among others) and the Port’s development partner. While this first phase budget submittal is a major milestone, there are several next steps to facilitate phase 1 implementation described below.

- **Park design review.** China Basin Park open house to review park design on October 1 from 6 to 8 p.m. at Oracle Park; schematic design review by Port's Design Advisory Committee in November; and Port Commission consideration of approval of park design in December.
- **Parks and open space operation, management, and concession agreement approval.** Port staff will present request for agreement approvals to the Port Commission later in 2019.
- **CFD Formation.** Port Staff anticipate bringing the Resolution of Intention and then the Resolution of Formation for the Mission Rock CFD to the Board of Supervisors later in 2019 and in early 2020.

Prepared by: Crezia Tano-Lee, Manager  
Business Strategy + Optimization

Raven Anderson  
Development Project Manager

Phil Williamson  
Senior Project Manager

Rebecca Benassini  
Assistant Deputy Director

For: Michael Martin, Deputy Director of  
Real Estate and Development

## EXHIBITS

1. DDA Excerpts
2. Port Revenue Projection
3. Illustrative Phase 1 Housing Rental Rates Mix
4. Mission Rock Jobs Housing Equivalency Fee
5. Parks Plan
6. Affordable Housing Subsidy Plan
7. Phase Submittal Summary
8. Economic Consultant Phase 1 Budget Technical Memorandum
9. Cost Estimator Technical Memorandum
10. San Francisco Public Utilities Commission Letter of Support for the Formation of a Nonprofit District Utilities Management Entity

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 19-39**

WHEREAS, Beginning in 2006, the Port initiated an intensive planning process that has culminated in a project that will restore and redevelop an approximate 28-acre site located along the Central Waterfront comprised of (1) Seawall Lot 337, bounded by Third Street on the west, Parcel P20 and 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, From 2007 to 2010, the Port conducted a community process that evaluated the unique conditions and opportunities at the Site and built a public consensus for its future within the policies established for the South Beach/China Basin Waterfront in the Port’s Waterfront Land Use Plan; and

WHEREAS, In May 2010, by Resolution No. 10-32, the Port Commission awarded to Seawall Lot 337 Associates, LLC, a Delaware limited liability company (“Developer”), through a competitive process, the opportunity to negotiate exclusively for the mixed-use development of Seawall Lot 337 and Pier 48, and the Port Commission later added China Basin Park, the marginal wharf between Pier 48 and Pier 50, and Parcel P20 to the development opportunity (collectively, the “Project”); and

WHEREAS, Developer is a limited liability company, which is wholly owned by TSCE 2007 Mission Rock, L.L.C. and Giants Development Services, LLC, the former is an affiliate of Tishman Speyer Properties, L.P., and the latter is an affiliate of San Francisco Baseball Associates, LLC, the Major League Baseball franchise holder of the San Francisco Giants; and

WHEREAS, In March 2013, by Resolution No. 13-10, the Port Commission endorsed a term sheet for the Project (the “Term Sheet”); and

WHEREAS, In May 2013, by Resolution No. 142-13, the Board of Supervisors found the Project fiscally feasible under Administrative Code - Chapter 29 and endorsed the Term Sheet for the Project now known as “Mission Rock”; and

WHEREAS, In January 2018, by Resolution No. 18-03, the Port Commission approved the terms of a Disposition and Development Agreement between the Port and the Developer (the “DDA”), and related transaction documents that are incorporated into the DDA, and provide an overall road map for development of the Project, including: a Financing Plan; an Infrastructure Plan; a Housing Plan; a Transportation Plan; a Transportation Demand Management Plan; a Workforce Development Plan; an LBE Utilization

Program; Mitigation Monitoring and Reporting Program and forms for an interim Master Lease, a Vertical Disposition and Development Agreement, and a Parcel Lease; and

WHEREAS, Concurrently with Resolution No. 18-03, the Port Commission authorized a number of other actions in furtherance of the Project, including: (1) consenting to amendments to the Planning Code that create the Mission Rock Special Use District (“Mission Rock SUD”) over the Site and related amendments to the zoning maps, as set forth in Resolution No. 18-04; (2) consenting to the Development Agreement between the City and County of San Francisco and Seawall Lot 337 Associates (the “DA”) as it relates to matters under Port jurisdiction, as set forth in Resolution No. 18-06; (3) approving the Design Controls, which provide more detailed land use controls for the Mission Rock SUD and conforming amendments to the Waterfront Land Use Plan, as set forth in Resolution No. 18.05; (4) approving and recommending that the Board of Supervisors approve a Memorandum of Understanding for Interagency Cooperation among the Port, and other City agencies with respect to approvals related to the subdivision of the Site and construction of infrastructure and other public facilities, Resolution No. 18-07; (5) recommending that the Board of Supervisors approve formation proceedings for sub-project areas to Project Area I of City and County of San Francisco Infrastructure Financing District No. 2, as set forth in Resolution No. 18-08; and (6) entering into a Memorandum of Understanding between the Port and the Treasurer-Tax Collector and the Controller regarding the collection and allocation of ad valorem and special taxes to the financing districts, as set forth in Resolution No. 18-09; and

WHEREAS, In February 2018, the Board of Supervisors approved the DDA by Resolution No. 42-18, and approved the DA by Resolution No. 33-18; and

WHEREAS, Under the DDA and related transaction documents, 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 affordable housing as described in the Housing Plan attached to 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; (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, The DDA governs: (1) Developer's obligations to complete horizontal development of the Project, including entitlements, site preparation, subdivision and construction work related to streets and sidewalks, public realm amenities (e.g., parks and open space), public utilities and shoreline area improvements (together, "Horizontal Development"), all to create development parcels and support and protect buildings; and (2) Developer's option to ground lease developable lots in the Site for vertical development, all in accordance with all of the governing land use and entitlement documents, including the Development Agreement, Mission Rock SUD, and Design Controls; and

WHEREAS, The DDA also governs Developer's obligations to deliver various public benefits, at full buildout, including: (1) providing 40 percent of all on-site residential units for households earning 45 to 150 percent of Area Median Income or less as further described in the Housing Plan; (2) approximately 5.4 acres of net new open space for a total of approximately 8 acres of new and expanded public open space maintained by special taxes paid by owners of the onsite vertical developments; (3) elevation of the Site and shoreline protection special taxes to protect against sea level rise, storm surges and periodic flooding along the Port's Bay waterfront; (4) robust local hiring, Local Business Enterprise commitments and good faith efforts as further described in the Workforce Development Plan and the LBE Utilization Program; (5) commitments to renewable energy, vehicular trip reduction, water recycling and waste diversion as further described in the Sustainability Strategy; (6) commitment to in-lieu transportation fees and fair share contributions to City transit projects serving the Site and its surroundings; and (7) a City option for up to 15,000 square feet of on-site community facility space; and

WHEREAS, The DDA allows the Port Commission to set the minimum Mission Rock Jobs Housing Equivalency Fees ("JHEF") and the DA requires that the Port set minimum JHEF per parcel; and

WHEREAS, The DDA requires that, prior to Developer making any presentations to the Port Commission regarding the schematic design of public spaces, Developer will host at least one public presentation of its design and present the design to a committee of design professionals designated by the Port Director; and

WHEREAS, On April 4, 2019 Developer submitted to the Port its "Phase Submittal" for "Phase 1" that included a proposed change to the boundary of Phase 1 from the boundary depicted when the DDA was approved; this proposed

boundary change specifies that parcels A, B, G and F, China Basin Park and adjacent streets and paseos comprise Phase 1. The Phase Submittal for Phase 1 was reviewed and approved by Port staff based upon the criteria set forth in the DDA for such approvals and is fully described and depicted in the staff report attached to this resolution; and

WHEREAS, Pursuant to the DA, as part of the Phase 1 approvals the Port Commission will adopt a parks plan that includes the proposed parks management entity, an operating budget, procedures for public events, maintenance plan, funding plan, park rules and regulations, and other information related to the successful management of the parks and open space, and a programming activation plan and special events plan that encourage programmed events and activities; and

WHEREAS, The DDA includes a Schedule of Performance that provides 60 months from the Phase 1 Notice to Proceed as the outside date for the completion of construction of all public infrastructure approved for Phase 1, including streets, utilities and parks; and

WHEREAS, The phase budget component of Developer's Phase Submittal totaled \$145 Million and after review by Port staff was determined to meet the requirements for Port Commission approval in that it: (1) is consistent with the project requirements and satisfies the project's budget guidelines; (2) is based on reasonable projections; (3) provides for sources sufficient to fund Phase 1; (4) would not adversely affect project payment sources available to satisfy the project payment obligation for any later phases; (5) would not impair the Port's fiduciary obligations under applicable Port laws; and

WHEREAS, The Port and Developer agree that in order to proceed with construction of horizontal improvements for Phase 1, the four Phase 1 parcel leases for Parcels A, B, G and F, must all close in advance of the issuance of a notice to proceed; and

WHEREAS, The DDA (1) establishes processes to ensure that the Port receives fair market value for the lease of all parcels as established by appraisal or public offerings on the open market; (2) provides for on-site inclusionary affordable housing, with impact fees payable by developers of commercial parcels used to support development of the affordable housing; (3) provides for the use of nontrust revenue sources in the form of tax increment and special tax revenues to the extent necessary to ensure the Project's fiscal feasibility; and (4) provides for the Port to be repaid, with interest, from nontrust revenues for costs of constructing infrastructure and public facilities needed and desired to support development at the Site; and

WHEREAS, The Financing Plan provides that (1) Developer is responsible for funding all entitlement costs and the costs of constructing Horizontal Development to the extent other Project sources are not available, subject to



reimbursement; (2) Developer's costs will be repaid with an 18% market rate of return (along with certain minimum return metrics) from a number of potential sources, including rent credits, lease proceeds, community facilities district and infrastructure financing district proceeds, and, at the Port's discretion, Port capital; and (3) after the Project reaches a certain rent threshold, Developer will participate in annual ground rent revenues as an incentive for efficient buildout of the Site; and

WHEREAS, The Port will coordinate the implementation of the Housing Plan attached to the DDA with the Mayor's Office of Housing and Community Development ("MOHCD") to ensure that the requirements set forth in the Housing Plan, including the on-site inclusionary unit locations, construction phasing, income verifications and the marketing plan for the affordable units are met; and

WHEREAS, Port staff, in consultation with MOHCD staff, has determined that the Phase 1 housing plan meets the requirements set forth in the Affordable Housing Plan attached to the DA; and

WHEREAS, The actions contemplated in this resolution are within the scope of the project for which the Port Commission (Resolution No. 18-06) and the Board of Supervisors (Resolution No. 33-18) adopted on January 30, 2018 and March 6, 2018, respectively, affirmed the Planning Commission's certification of the Final Environmental Impact Report for the Seawall Lot 337 and Pier 48 Mixed-Use Project (Planning Commission Motion No. 20018) and made findings in accordance with the California Environmental Quality Act (California Public Resources Code section 21000 et. seq.) and Administrative Code Chapter 31, which resolutions are incorporated herein by reference; now, therefore be it

RESOLVED, In accordance with the DA, the minimum Mission Rock Jobs Housing Equivalency Fee ("JHEF") for Parcel B shall be no less than \$74.9 Million and the minimum JHEF for Parcel G shall be no less than \$60.4 Million; and

RESOLVED, That the Port Commission adopts a parks plan in the form attached to the staff report and authorizes the Executive Director of the Port, or her designee, to enter into any amendments or modifications necessary or appropriate to implement the parks plan in accordance with this resolution; and be it further

RESOLVED, That the Port Commission approves the \$145 Million Phase 1 budget and finds in accordance with DDA Section 3.5(e) that it: (1) is consistent with the funding goals and project requirements and satisfies the budget guidelines; (2) is based on reasonable projections; (3) provides for sources sufficient to fund the Phase; (4) would not adversely affect project payment sources available to satisfy the project payment obligation for any

later phases; (5) would not impair the Port's fiduciary obligations under applicable Port laws; and be it further

RESOLVED, To the extent that implementation of the DDA involves the execution and delivery of additional agreements, notices, consents and other instruments or documents by the Port, including, without limitation, the Master Lease and instruments leasing development parcels to vertical developers (such as the Parcel Leases and Vertical Disposition and Development Agreements) (collectively, "Subsidiary Agreements"), the Executive Director, or her designee, is authorized to execute all such Subsidiary Agreements so long as the transactions governed by such Subsidiary Agreements are contemplated in, and comply with the terms of, the DDA, and with respect to the Master Lease, Parcel Leases and Vertical Disposition and Development Agreements, are substantially in the form of the Master Lease, Parcel Lease and Vertical Disposition and Development Agreement attached as Exhibits to the DDA and do not materially increase the obligations or liabilities of the Port or the City or materially decrease the public benefits to the Port or the City, and are necessary or advisable to complete the transactions described in this DDA and to effectuate the purpose and intent of the authorizing resolutions if the Executive Director determines, after consultation with the City Attorney, that the document is necessary or proper and in the Port's and the City's best interests; and be it further

RESOLVED, That the Port Commission authorizes and urges all officers, employees, and agents of the Port and the City to take all steps that they deem necessary or appropriate, to the extent permitted by applicable law, in order to implement the DDA in accordance with this resolution.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of September 24, 2019.***



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Secretary

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION No. 19-40**

- WHEREAS, The Port Commission of San Francisco is a public body that is responsible for the seven and one-half miles of San Francisco Waterfront adjacent to San Francisco Bay, which the Port develops, markets, leases, administers, manages, and maintains; and
- WHEREAS, The Port Commission, in conjunction with Seawall Lot 337 Associates, LLC, a Delaware limited liability company, has undertaken development of a new mixed-use neighborhood within its jurisdiction known as the Mission Rock Project (the “Mission Rock Project” or “Project”), that will include parks and open space, market and affordable rental housing, and public waterfront access as well sea level rise resiliency and adaptation features and historic rehabilitation of Pier 48; and
- WHEREAS, The City of San Francisco and the Port Commission have approved ambitious sustainability, water conservation and renewable energy goals for the Mission Rock Project; and
- WHEREAS, Mission Rock Utilities, Inc.(the “Corporation”), is in the process of incorporating as a nonprofit corporation to be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to provide thermal energy and recycled water services to customers within the Project through the design and construction of a new district energy system and black water recycling system and for use in soliciting public and private financing of such systems; and
- WHEREAS, The Corporation will only serve the Project, its buildings, owners and office and retail tenants, the residents of the market-rate and affordable housing being constructed thereon, and the public open spaces and amenities; and
- WHEREAS, The purpose of the Corporation is the provision of utility services in a manner that meets the Project’s and Port Commission’s goals for environmental sustainability and cost efficiency; and
- RESOLVED, The Port Commission hereby supports the formation of the Corporation as a nonprofit entity to build and operate a thermal district energy system and a black water recycling system for the Project and encourages the Corporation to work with Port staff towards the provision of thermal energy and recycled water services to the Project.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of September 24, 2019.***



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Secretary



## MEMORANDUM

November 4, 2022

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. John Burton  
Hon. Gail Gilman  
Hon. Steven Lee

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Port to Enter into Agreement to Purchase Non-Potable Water from Mission Rock Utilities for China Basin Park and other Port-accepted Areas of the Mission Rock Site at Seawall Lot 337, Bound by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 22-54

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### **EXECUTIVE SUMMARY**

On October 11, 2022, the Port Commission heard an informational item on the proposed Water Purchase Agreement. The only changes from the informational staff memorandum are to correct typographical errors and to make clarifications for consistency, such as clarifying a technical inclusion of a budget appropriation in the event the Port elects to collect and utilize the contingent special services tax. No other substantive changes to the text, proposed rates, delegated authorities, or other items have been made. Other than the above information, this memorandum is identical to the information presented at the October 11th meeting, with the addition of the recommended resolution, attached.

The “Mission Rock Project” (or “Project”), located at Seawall Lot 337, bound by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay, is now over one year into Phase 1A horizontal and vertical construction activities. The Developer team has been successful in managing supply chain challenges and been able to maintain significant construction progress while staying within budget. Site milestones include completion of superstructures and façade installation at parcels A, B and G. The final Phase 1 building, a residential tower at Parcel F, has a completed foundation, an installed tower crane, and vertical superstructure work will begin this month. Phase 1 infrastructure construction is nearing completion with the City and Port beginning to work with developer on the formal acceptance process for these improvements. Work on the inland portion of China Basin Park is advancing at a steady pace and is expected to be complete in time to welcome the project’s first occupants in mid-2023.

At the March 8, 2022, Port Commission meeting, staff provided an informational presentation on a key element of the Project’s Sustainability Strategy: production of District-scale, Black Water Recycling System to substantially decrease the use of potable (fresh) water for non-potable water uses (e.g., irrigation, toilet flushing, and cooling tower). Consistent with 2019 Port Commission Resolution No. 19-40 supporting the formation of a nonprofit to build, own, and operate District-scale utilities, the Developer and partners have formed Mission Rock Utilities to deliver a thermal District Energy System and non-potable water system.<sup>1</sup> To obtain and service private financing to construct these systems, Mission Rock Utilities must have contracts in place with customers. As the owner of future parks, the Port must secure water for irrigation.

The Black Water Recycling System will be a model of sustainability in development and at the forefront of policy to manage California’s long-term drought conditions. It will be one of the first and largest black water recycling facilities in San Francisco. At full build out, the Black Water Recycling System will recycle 64,000 gallons of black water each day to save 43,000 gallons of potable water for a total of 13.9 million gallons of water saved each year.

Construction of the facility began in June 2021 in Building B. Substantial completion and pressurization using potable water and sewage pumping is expected in November 2022. Over the next year or more, the system will go through clean-water testing, reach sufficient flow of black water from buildings, and hold SFDPH compliance operations. In January 2024, substantial completion of recycled water operations is expected.

Today’s staff report and presentation provide additional information about this important work including proposed terms between the Port and Mission Rock Utilities for a non-potable water purchase agreement including a contract length, minimum water production

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1

See staff report and resolution here, item 7A. <https://sfport.com/meetings/san-francisco-port-commission-september-24-2019>

provisions, and maximum contract cost. Port staff will return to the Port Commission for consideration of action on this agreement. Contract execution would also require Board of Supervisor's action.

## **STRATEGIC OBJECTIVES**

The Mission Rock Project supports the Port's Strategic Plan strategies of Productivity, Resilience, and Sustainability.

- **Productivity.** Redevelopment of a surface parking lot into the Mission Rock neighborhood supports the goal of enhancing the economic vitality of the Port.
- **Resilience.** The Mission Rock project will elevate the site to prepare for a 100-year flood and provide special tax sources for waterfront resilience projects across the Port.
- **Sustainability.** The on-site Blackwater Recycling System (BWRS) will treat wastewater for additional non-potable use within Mission Rock, reducing the project's overall potable water usage by 13.9 million gallons annually.

## **MISSION ROCK PROJECT BACKGROUND AND UPDATE**

The entitled Mission Rock project anticipates approximately 1,200 units of new, 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 Mission Rock Project is located on about 28 acres, including SWL 337 and Pier 48.

Approved in 2018 and now an active construction site, the Project represents 12 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 (the "Developer").

Phase 1 includes the following program elements:

- 537 apartment units
  - 199 of which are below market rate units
- 588,000 gross square feet office
- 50,000 gross square feet of retail
- District energy system located in Parcel A which will serve all of Mission Rock
- District scale Non-Potable Water Plant located in Parcel B which will serve all of Mission Rock's indoor and outdoor recycled water needs

Key public benefits include affordable housing, parks and open space, sustainability strategy goals, and achievement of workforce and local hire requirements and goals

agreed upon in the Project's Development and Disposition Agreement and the Development Agreement.

Construction at the site continues forward as the project hits major horizontal and vertical milestones. Vertical construction continues to move forward, with the most recent critical milestone being the Parcel F mat pour. The project team successfully orchestrated a smooth overnight process, which entailed pouring and setting approximately 3200 cubic yards of concrete at the base of Parcel F. Parcel A recently demobilized the Hoist ("manlift") and is nearing completion of precast installation along the remaining corner of the building. The project team on Parcel G will begin filling planter boxes on the terraces with plants in the coming weeks. Parcel B continues to work toward completing necessary mechanical, electrical, plumbing inside the building, while preparing for paving work along the outdoor terraces.

China Basin Park is currently under construction with construction expected to be completed next year. The Port anticipates accepting the park around this time next year.

Despite increased construction costs and rising interest rates, the project is still on track to stay within the Phase 1 budget.

### **MISSION ROCK LOCAL BUSINESS ENTERPRISE UPDATE**

The Mission Rock project was one of the City's first development projects to commit to a Local Business Enterprise ("LBE") participation goal. Working collaboratively with general contractors, RDJ Enterprises, Monica Wilson, Port staff, and the San Francisco Contract Monitoring Division, the project team continues to implement additional barrier mitigation strategies to help identify and assist local and historically underrepresented businesses to be competitive during the bid and awarding process.

During 2Q 2022, Mission Rock Partners realized an increase in overall LBE participation by \$20,633,551, while also increasing contract dollars awarded to minority- and women-owned local businesses. The equity efforts through Q2 2022 have resulted in \$85,579,895 LBE value awarded to minority-owned and woman-owned companies, equal to 70% of LBE contract values awarded. Additionally, minority-owned LBE awards increased from \$55,044,877 at end of Q1 2022, to \$64,715,577 cumulative through Q1 2022, increasing from 7.71% of total project awards to 8.18% of total project awards.

Some representative LBE-MBE companies awarded new or additional contracts in the Q2 2022 term include: Master Painting, Picture Painting, Temper Insulation, Harris Hoisting.



The project has established a goal of 20% overall LBE participation and the participation continues to trend upwards as Phase 1 procurement comes to an end. As of June 2022, Mission Rock's total contracts to Local Business Enterprises totaled \$124.16 million, summing to 15.61% of overall.

The above data from the Developer is under thorough review by Port staff and will be confirmed and verified during the normal course of our quarterly review.

## **MISSION ROCK SUSTAINABILITY STRATEGY OVERVIEW**

As originally reported to the Port Commission as part of a July 2017 staff report, the Mission Rock Sustainability Strategy summarizes how the Project will attain high levels of performance in social, economic, and environmental sustainability, with a focus on equity, resilience and climate protection. The Sustainability Strategy assumes that sustainability is not an isolated feature of the Project, but rather a way of thinking, designing, and implementing the Project that will be integrated into many elements of its neighborhood, from the way structures are designed to how water is used, from the provision of multi-modal transportation choices to landscape design. The Sustainability Strategy was approved by the Port Commission as DDA Exhibit B8.

These approaches are integrated throughout the Project's key planning documents, including the SUD Design Controls, Transportation Plan, and Infrastructure Plan. The Sustainability Strategy acts as a reference document which consolidates and summarizes all the sustainability elements into one place.

- **Livability.** The Project will bring people together through an inviting and welcoming balance of uses including grocery, restaurants, laundry, childcare, space for artists and makers, 8 acres of open space; and through events such as open-air markets, concerts, films, and other special events.
- **Prosperity.** The Project aims to support employment and innovation onsite over the long-term. It sets targets of 10,000 permanent jobs and 11,000 construction jobs, with at least 20% LBE and Local Hire commitments for the construction jobs utilizing our local workforce. It also targets a robust mix of commercial office, residential, and a variety of ground floor retail spaces at full build-out.
- **Health & Wellness.** The Project aims to support active lifestyles through walking, bicycling, paddling, and active recreation opportunities. The Project's parks and open space are adjacent to each residential building.

- **Ecosystems and Resource Stewardship.** The Project aims to improve and enhance the extent and quality of ecosystem services, habitat connectivity and biodiversity present on the site. The Project's blackwater system, will manage stormwater and reduce water usage onsite. Street trees and greenery on streets, in parks and on rooftops, will improve air quality, provide expanded habitat area, and provide opportunities for residents and visitors to connect with nature.
- **Climate Protection & Energy Efficiency.** Objectives of the Sustainability Strategy are the construction of buildings and infrastructure that achieve top-performing energy efficiency ratings; greenhouse gas emission reductions from energy use on-site; and reduction of urban heat island effects. Consistent with the Phase 1 approval, the Developer will also implement a site-wide district energy system appropriate for San Francisco's mild climate, which will supply hot and cold water from a single plant to each building through a network of underground distribution pipes. Mission Rock has achieved LEED-Gold certification for Neighborhood Development, supporting a long-intended environmental milestone for the project.

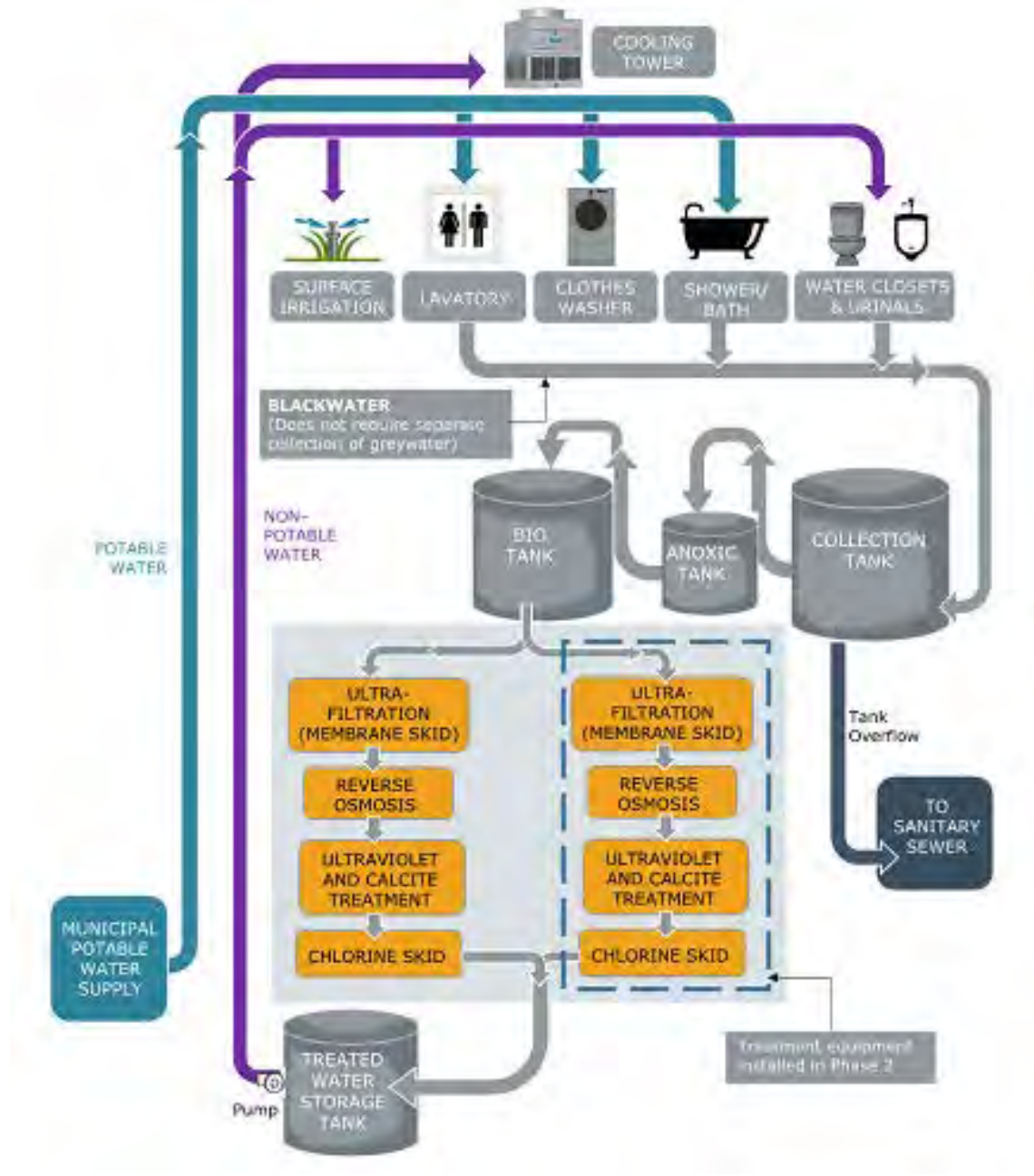
### Achieving Sustainability Targets

Every aspect required under the Sustainability Strategy is included in approved regulatory documents including the DDA, Infrastructure Plan, and Design Controls. The targets in the Sustainability Strategy form the basis for regular monitoring.

The Mission Rock Sustainability Strategy includes goals to build healthy and energy-efficient buildings, reduce greenhouse gas emissions, and create a resilient site to protect against future sea level rise. Important targets of the Sustainability Strategy include obtaining 100% of operational energy from renewable sources and meeting 100% of non-potable water demand with non-potable sources.

Unique sustainability features include a thermal District Energy System ("DES") designed to reduce carbon emissions and water use and a district scale BWRS that will provide recycled water to the entire project site. The DES will supply hot and cold water from a single plant through a network of underground distribution pipes for heating and cooling in each building. The BWRS will treat water collected from sinks, showers, and toilets in a central plant and supply recycled water to all buildings and open spaces for irrigation, toilet flushing, and cooling tower makeup water. The diagram below shows the process for collecting, treating, and using recycled water.

Figure 2. Blackwater Treatment Process



## **MISSION ROCK UTILITIES**

On September 24, 2019, the Port Commission adopted Resolution Nos. 19-39 and 19-40. The staff report supporting Resolution No. 19-39, which approved the Phase 1 budget, explained that the budget did not include the Blackwater Plant because: (1) the Plant would not be owned and operated by SFPUC due primarily to its small size and (2) the private entity model allowed for the upfront costs to be financed outside of the project's finite, public financing proceeds. Along with a supporting letter from SFPUC, the Port

Commission also passed Resolution No 19-40, supporting formation of Mission Rock Utilities, Inc. (“MRU”) as a nonprofit entity to build and operate the DES and BWRS for the Project.

Mission Rock Utilities, LLC was formed as a Delaware Non-Stock Corporation in December 2019 for this purpose. Through Resolution 19-40, MRU and Port staff are encouraged to work towards the provision of recycled water to the Project. The primary purpose of MRU is the provision of utility services in a manner that meets the Project’s goals for environmental sustainability and cost efficiency. MRU will only serve the Project, providing thermal energy for heating and cooling buildings and recycled water for non-potable uses such as toilet flushing and irrigation.

MRU was able to seek debt financing at rates lower than the cost of horizontal equity, allowing for a cost savings to be achieved by the project. MRU issued \$25 million of bonds in November 2020 to fund the initial construction of the BWRS and DES. In June 2022, MRU issued new debt totaling \$43.525 million to repay the original shorter-term debt and fund the remaining costs for the system and startup operations. Over time, MRU will repay these bonds, ongoing operations costs, and the costs of recycled water through customer charges only. All costs of operating the BWRS will eventually pass on to the customers – the Port and building owners through the Master Association – who share the cost burden equitably. In any event customers will pay their pro-rata share of actual costs incurred by MRU, and the structure ensures that MRU will not make a profit.

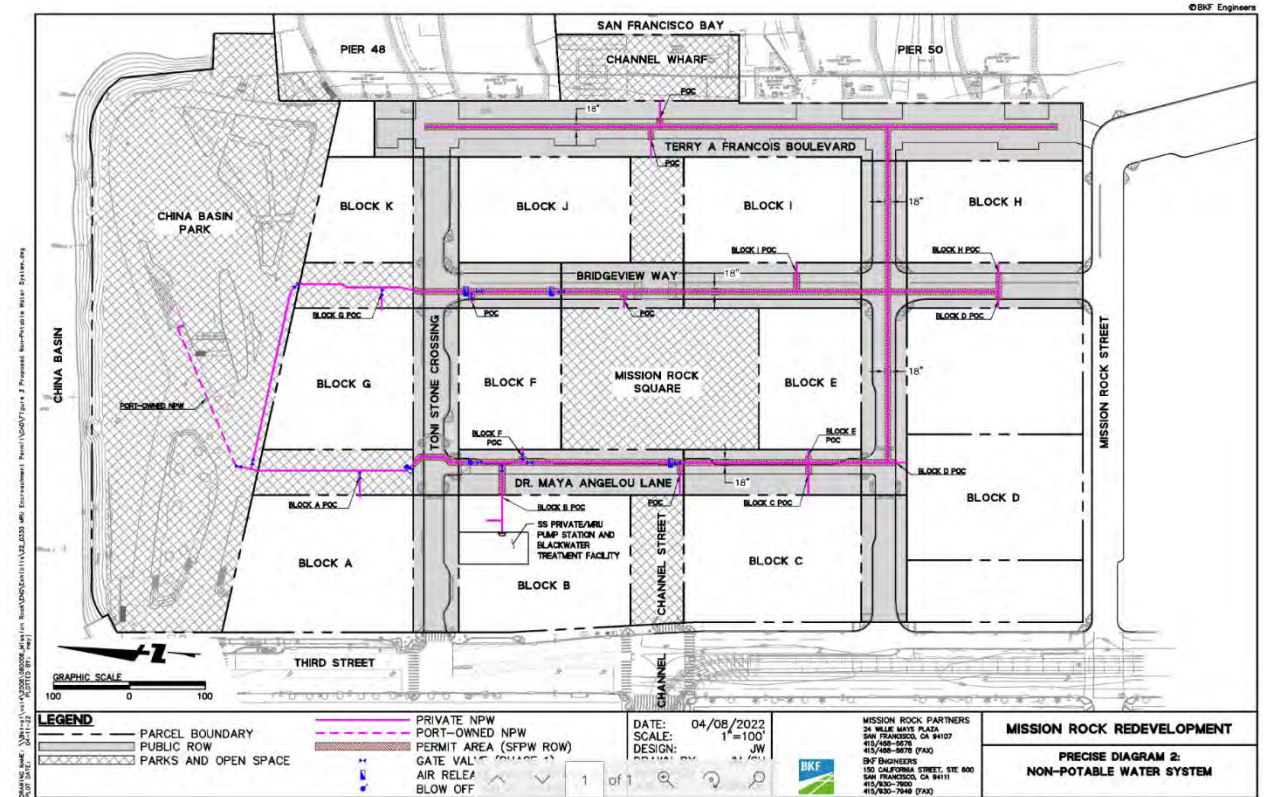
MRU began construction on the BWRS in Building B in June 2021. The horizontal infrastructure construction included service piping to connect wastewater pipes to the BWRS and return recycled water to the buildings and open spaces for non-potable uses. Substantial completion and pressurizing of the facility with potable water and sewage pumping are currently anticipated in November 2022. In 2023, the facility will undergo clean-water testing, achieve sufficient sewage flow upon building occupancy, and hold a 90-day SFDPH compliance operation period. Substantial completion of the facility and recycled water operations is expected in January 2024 pending the production of wastewater from building occupancy.

### **AGREEMENT TO PURCHASE NON-POTABLE WATER**

To fulfill the commitment under the Mission Rock sustainability strategy, Port staff and MRU have negotiated an agreement for the Port to purchase water (“Water Purchase Agreement” or “WPA”) from MRU’s BWRS for non-potable uses (non-drinking water, e.g., toilets and irrigation) in China Basin Park (“CBP”) and other future public open spaces accepted by Port within the Mission Rock Project site.

The WPA will be effective upon the Port’s acceptance of the Phase 1 public open spaces (anticipated in mid-2023 and called the “Initial Premises” in the contract) and continue for thirty years, at which point the Port will have the option to extend the term. Port staff plan to seek a Sole Source Waiver from the Board of Supervisors for the WPA. Figure 2 below generally represents the area of the recycled water service pipes for all phases of the Mission Rock Project and within Port-accepted facilities.

Figure 2. Mission Rock Recycled Water Service Pipes



MRU will need a separate license with the Port to access and maintain MRU infrastructure on Port property shown above. Port staff anticipate returning to the Port Commission to request approval of a no fee license for MRU’s pipes within Port-owned parks and open space.

MRU’s obligations, including debt service for the facility, are paid by MRU but funded solely by customers within the Mission Rock project including the Port and building owners through the Master Association. All building owners, including those in future phases of the project, will become MRU customers.

All customers of the BWRS will pay two different cost-based charges to utilize recycled water: a Capacity Charge and a Flow Charge. The Capacity Charge will pay the debt service on bonds or other financing and other fixed operating costs (e.g., maintenance,

repairs, and water testing). It is a fixed charge that will be billed as a consistent amount each month. The Port has the option to approve the use of future Phase horizontal project funds to pay off MRU bonds, which would eliminate debt service costs in the capacity charge and significantly reduce overall water costs under the WPA. This option is in line with anticipated financing at Project approvals in 2018. At that time, the Port and Developer anticipated SFPUC would accept and operate a BWRS plant for the site and the Port would use public financing to pay for the plant's construction costs. However, for a variety of reasons including size (the system is small relative to SFPUC systems) and ongoing costs (e.g., rental costs for space within Parcel B), SFPUC decided not to operate the BWRS. SFPUC encouraged the project team to integrate the plant into the district under nonprofit management to achieve Sustainability Goals.

The Flow Charge will cover the variable amount of water each customer uses monthly and will be based on actual recycled water usage and costs. The Flow Charge is estimated to be \$33.12 per CCF (one-hundred cubic-feet or 748 gallons) and may be compared to the SFPUC rate for potable water of \$10.55 – 10.76 per CCF. The higher rate compared with Hetch Hetchy water is due to the costs of treating and testing recycled water and to promote conservation. The Mission Rock Contingent Services Special serves as the funding source for both WPA costs.

The Port's agreement includes a cap on both Capacity Charges and Flow Charges of projected costs plus a 10 percent contingency, escalated at no more than 5 percent annually. The cap will increase annually by the rate at which the Mission Rock Contingent Services Special Tax increases annually as defined by the Rate and Method of Apportionment. Actual charges will be based on actual fixed costs to operate the system plus actual recycled water usage, with a maximum cap. Table 1 below shows the cap for Capacity and Flow Charges, and Table 2 below shows the projected costs for Capacity and Flow Charges.

*Table 1. Cap for Capacity and Flow Charges*

<b>Year</b>	<b>Non-Potable Water Capacity Charge (\$) [1]</b>	<b>Port Non-Potable Water Flow Charge (\$)</b>	<b>Total (\$)</b>
<b>1</b>	607,534	64,611	672,145
<b>2</b>	637,911	67,841	705,752
<b>3</b>	669,806	71,234	741,040
<b>4</b>	703,297	74,795	778,092
<b>5</b>	738,462	78,535	816,997
<b>6</b>	775,385	82,462	857,846
<b>7</b>	814,154	86,585	900,739
<b>8</b>	854,862	90,914	945,776

<b>Year</b>	<b>Non-Potable Water Capacity Charge (\$) [1]</b>	<b>Port Non-Potable Water Flow Charge (\$)</b>	<b>Total (\$)</b>
<b>9</b>	897,605	95,460	993,064
<b>10</b>	942,485	100,233	1,042,718
<b>11</b>	989,609	105,244	1,094,854
<b>12</b>	1,039,090	110,507	1,149,596
<b>13</b>	1,091,044	116,032	1,207,076
<b>14</b>	1,145,596	121,833	1,267,430
<b>15</b>	1,202,876	127,925	1,330,801
<b>16</b>	1,263,020	134,321	1,397,341
<b>17</b>	1,326,171	141,038	1,467,208
<b>18</b>	1,392,479	148,089	1,540,569
<b>19</b>	1,462,103	155,494	1,617,597
<b>20</b>	1,535,209	163,269	1,698,477
<b>21</b>	1,611,969	171,432	1,783,401
<b>22</b>	1,692,568	180,004	1,872,571
<b>23</b>	1,777,196	189,004	1,966,200
<b>24</b>	1,866,056	198,454	2,064,510
<b>25</b>	1,959,358	208,377	2,167,735
<b>26</b>	2,057,326	218,795	2,276,122
<b>27</b>	2,160,193	229,735	2,389,928
<b>28</b>	2,268,202	241,222	2,509,424
<b>29</b>	2,381,612	253,283	2,634,896
<b>30</b>	2,500,693	265,947	2,766,640

*Table 2. Projected Costs for Capacity and Flow Charges*

<b>Year</b>	<b>Port Non-Potable Water Capacity Charge (\$) [1]</b>	<b>Port Non-Potable Water Flow Charge (\$)</b>	<b>Total (\$)</b>
<b>1</b>	552,304	64,611	616,915
<b>2</b>	579,919	67,841	647,760
<b>3</b>	608,915	71,234	680,148
<b>4</b>	639,361	74,795	714,156
<b>5 (Phase 2)</b>	512,170	95,421	607,591
<b>6</b>	537,778	100,192	637,970
<b>7</b>	564,667	105,202	669,869
<b>8</b>	592,900	110,462	703,362
<b>9</b>	622,545	115,985	738,530
<b>10 (Phase 3)</b>	652,029	131,862	783,891
<b>11</b>	684,630	138,455	823,085



<b>Year</b>	<b>Port Non-Potable Water Capacity Charge (\$) [1]</b>	<b>Port Non-Potable Water Flow Charge (\$)</b>	<b>Total (\$)</b>
<b>12</b>	718,862	145,377	864,239
<b>13</b>	754,805	152,646	907,451
<b>14</b>	792,545	160,279	952,824
<b>15</b>	832,173	168,293	1,000,465
<b>16</b>	873,781	176,707	1,050,488
<b>17</b>	917,470	185,543	1,103,013
<b>18</b>	963,344	194,820	1,158,163
<b>19</b>	1,011,511	204,561	1,216,072
<b>20</b>	1,062,086	214,789	1,276,875
<b>21</b>	1,115,191	225,528	1,340,719
<b>22</b>	1,170,950	236,805	1,407,755
<b>23</b>	1,229,498	248,645	1,478,143
<b>24</b>	1,290,973	261,077	1,552,050
<b>25</b>	1,355,521	274,131	1,629,652
<b>26</b>	1,423,297	287,837	1,711,135
<b>27</b>	1,494,462	302,229	1,796,692
<b>28</b>	1,569,185	317,341	1,886,526
<b>29</b>	1,647,645	333,208	1,980,852
<b>30</b>	1,730,027	349,868	2,079,895

*[1] This charge is largely the financing charges for the upfront costs of the system. The Port has the option to use public financing in future phases to repay this debt and thereby reduce the financing costs. Had the facility been built and accepted by SFPUC, the full costs of the system would have been paid for upfront by the project via public financing.*

As shown in Table 2 above, the Port anticipates Capacity Charges will decrease over time as later Phases are completed and more buildings share the fixed costs of BWRS capital and operations. Additionally, Table 2 does not reflect the paydown of MRU debt by future phase horizontal funds, which could materially reduce the capacity charges.

The final liability and indemnity provisions and insurance levels will be determined in accordance with the City's Risk Manager's recommendations.

Neither party can terminate the WPA for convenience to ensure long-term sustainability goals are met. However, the Port will suspend payment if MRU does not perform its obligations under the agreement. Additionally, if other customers of MRU terminate their agreements, the Port will have the option to terminate the WPA.

Under the WPA, MRU is required to maintain operating standards to ensure continuous availability of recycled water for non-potable uses. However, if at any time the facility cannot provide recycled water due to an equipment failure, system malfunction, other reason, MRU may fulfill their obligations by providing potable water from the SFPUC at the actual cost of water. Table 3 below summarizes the key terms of the WPA:

*Table 3. Summary of Key Terms in WPA*

<b>Commencement</b>	Acceptance of Phase I parks and open spaces (anticipated in mid-2023)
<b>Length</b>	30 years
<b>Annual Initial Cap (combined Capacity + Flow Charges)</b>	\$672,145 (increases up to 5 percent annually and tied to increases to special taxes in RMA)
<b>Projected 1<sup>st</sup> year costs</b>	\$616,915
<b>Non-Potable Water Use (Phase 1)</b>	3,999 gallons per day (1.5 million gallons annually)
<b>Non-Potable Water Use (Project)</b>	5,260 gallons per day (1.9 million gallons annually)
<b>Price of Water</b>	\$33.12 per CCF (one-hundred cubic-feet)
<b>Intention to Assign</b>	Port intends to assign obligations of this agreement to Mission Rock Commons, LLC. or another Mission Rock affiliate, which will manage parks and open space through the future Parks Lease, releasing Port from any obligations or liability
<b>Revenue Source</b>	Master Association assessments and other non-Port sources; if Port is responsible instead of park tenant, Contingent Special Services Tax is used to pay for WPA charges

**INTENTION TO ASSIGN WPA TO PARKS TENANT**

The Port intends to assign the obligations of the WPA to Mission Rock Commons LLC (“MRC”, or another Mission Rock affiliate as similar park tenant, or to the extent necessary, the Port’s selected park tenant), through a lease for China Basin Park and other public open spaces (the “Parks Lease”). Port staff are in the process of negotiating the Parks Lease and anticipates returning to the Commission for approval of the Parks Lease. Through this assignment, in addition to its other management obligations, MRC or another park tenant will assume all the Port’s obligations under the WPA, and MRU will release the Port of all the Port’s obligations under this agreement. Through the Parks Lease, the Port will have no costs for the WPA or parks and open space management; therefore, the Contingent Special Services tax will not be levied.

If at any time the Port or MRC terminate the Parks Lease, the obligations of the WPA would return to the Port. The Port would then have the option to assign the WPA to another entity for management, at which point the obligations of the WPA would transfer so long as that entity was performing.

### **FUNDED BY COMMUNITY FACILITIES DISTRICT CONTINGENT SERVICES TAX**

If for any reason the Port elects to not have a park tenant or the Parks Lease terminates, and the Port desires to manage China Basin Park and other open space areas directly, the Port will utilize a dedicated revenue source from the Mission Rock Community Facilities District to pay for services under this agreement. The Contingent Special Services Tax is not levied on the Community Facilities District so long as the Parks Lease is in place, but the tax is triggered upon the lease's termination if it ever occurs. If that circumstance occurs in the future, the Port will use the Contingent Special Services Tax revenues to pay for WPA costs and to fund maintenance of parks and open spaces at Mission Rock.

The Maximum Contingent Services Special Tax for the entire project in FY22-23 would be \$2,741,959. This amount will continue to escalate as set forth in the RMA for each tax year. For Phase 1 only, the Maximum Contingent Services Special Tax would be \$1,303,608. If managed directly, the Port intends to fully fund its obligations under the WPA and the operations of China Basin Park and other open spaces with these revenues.

### **CONCLUSION**

The Mission Rock Project's Sustainability Strategy contributes to a vibrant, accessible, environmentally thoughtful approach to building a new neighborhood. These tools will help the City and region grow responsibly while supporting the financial and functional needs of an active new waterfront neighborhood. Upon approval of this resolution, Port staff will continue to negotiate the Parks Lease and seek approval of the finally negotiated Water Purchase Agreement and the associated supplemental budget appropriation to receive \$672,145 in Contingent Special Services Taxes and expend \$672,145 for the Water Purchase Agreement at the Board of Supervisors to serve as a reserve if those funds are ever needed.

Prepared by: Phil Williamson  
Senior Project Manager

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For: Rebecca Benassini  
Deputy Director of  
Real Estate and Development

**PORT COMMISSION  
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 22-54

WHEREAS, The Port Commission approved development of a new mixed-use neighborhood within its jurisdiction by Seawall Lot 337 Associates, LLC, known as the Mission Rock Project (the “Mission Rock Project” or “Project”); and;

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

WHEREAS, The Port Commission approved Resolution No. 19-40 on September 24, 2019 supporting the formation of Mission Rock Utilities, Inc. (“MRU”), a not-for-profit entity that would build and operate a thermal district energy system and a black water recycling system for the Project and encouraging the Corporation to work with Port staff towards the provision of thermal energy and recycled water services to the Project; and

WHEREAS, MRU will only serve users of water for non-potable uses in the Project; and

WHEREAS, The Port aims to advance these environmental sustainability goals by purchasing water provided by MRU for non-potable uses such as irrigation and water closets in Port-owned parks and public spaces through a Water Purchase Agreement (“WPA”) on terms as described in the memorandum accompanying this resolution and substantially in the form of agreement lodged with the Port Commission Secretary; and

WHEREAS, Under the WPA, MRU will operate the Black Water Treatment Plant and associated functions on a cost-based manner where the Port will pay its share of actual costs incurred by MRU based on recycled water capacity needs and actual water usage, subject to the Annual Cap, which is based on projected cost-based charges plus contingency amounts; and

WHEREAS, The Annual Cap is the maximum charge the Port will pay in any year for its obligations under the WPA; the Annual Cap does not affect water delivery obligations by MRU under the WPA; for the first year (2023) of the WPA the Annual Cap is \$672,145 and it will increase annually by the Escalator set

forth in the Rate and Method of Apportionment of Special Tax District 2020-1 (Mission Rock Facilities and Services); and

WHEREAS, The Port intends to assign its obligations under the WPA to an affiliate of the Master Developer through a Parks Lease before the WPA becomes effective, whereby the affiliate will assume the management of all Port-owned parks and public spaces including all of Port's obligations under the WPA; and

WHEREAS, If for any reasons the Port elects not to assign its obligations through a Parks Lease or if the Parks Lease terminates in the future, the Port will utilize the Mission Rock Community Facilities District Contingent Special Services Tax as a dedicated revenue source to pay for services under the WPA; and

WHEREAS, The Maximum Contingent Services Special Tax for the entire project in FY22-23 is estimated to be \$2,741,959 and the Maximum Contingent Services Special Tax for Phase 1 only is estimated to be \$1,303,608; now, therefore, be it

RESOLVED, That the Port Commission approves the WPA whereby the Port will purchase water from MRU for non-potable uses in Port-owned parks and public spaces in the Mission Rock project and authorizes the Executive Director or her designee to execute the WPA in substantially the same form on file with the Port Commission Secretary after Board of Supervisors approval; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments, or other modifications to the WPA that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

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

RESOLVED, That staff is directed to submit a supplemental appropriation ordinance to the Board of Supervisors to receive \$672,145 in Contingent Services Special Tax

and expend \$672,145 for the WPA costs for their review and approval; and, be it further

RESOLVED, That if for any reason the Port has not assigned its obligations of the WPA, the Port will utilize the Contingent Services Special Tax (through direct payment or reimbursement) to fund the Port's obligations under the WPA and the operations of China Basin Park and other open spaces in the Mission Rock Project.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 8, 2022.***

DocuSigned by:  
*Carl Norta*  
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Secretary

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Delepine, Boris \(PRT\)](#); [Tam, Madison \(BOS\)](#)  
**Subject:** Mayor -- Resolution-- Water Purchase Agreement between the San Francisco Port Commission and Mission Rock Utilities  
**Date:** Tuesday, December 13, 2022 4:53:38 PM  
**Attachments:** [Mayor -- Resolution-- Water Purchase Agreement between Port Commission-Mission Rock.zip](#)

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Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving a Water Purchase Agreement between the San Francisco Port Commission and Mission Rock Utilities for purchase of water for Port-owned parks and open space at Mission Rock, with a term of thirty (30) years up to a maximum cost of \$44,656,545.

Please note that Supervisor Dorsey is a co-sponsor of this legislation.

Best,  
Susanna

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