

## WATER MANAGEMENT AGREEMENT

This WATER MANAGEMENT AGREEMENT (“Agreement”), dated as of August 23, 2013 (“**Effective Date**”), is entered into by and between the CITY AND COUNTY OF SAN FRANCISCO (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), and MISSION VALLEY ROCK CO., a California corporation (“**MVR**”), and is made with reference to the facts and circumstances described in the Recitals set forth below.

### RECITALS

A. City and G. Armanino & Son, Inc. (“**Armanino**”) entered into that certain master lease agreement dated June 20, 1985 (“**Master Lease**” or “**Lease No. 3555A**”) for Armanino’s use of approximately 204 acres of land in Sunol, California (“**Master Lease Premises**”).

B. Armanino and MVR entered into that certain Sublease Agreement dated June 20, 1985 (“**Sublease**”) for MVR’s use of approximately 135 acres of the Master Lease Premises in Sunol, California (“**Existing SMP 24 Premises**”).

C. City approved the assignment of Armanino’s interest in the Master Lease to MVR, effective December 23, 1986.

D. MVR and City are also parties to a lease dated September 26, 2000 (“**Lease No. 3931**”) for MVR’s use of approximately 242 acres of land adjacent to the Existing SMP 24 Premises, pursuant to which MVR extracts material under the terms of Alameda County Surface Mining Permit No. 32 (“**SMP 32**”). Lease No. 3931 superseded and incorporated the 69-acre portion of Lease No. 3555A designated as Parcel A of the Master Lease Premises. Lease No. 3931 will expire on October 31, 2040.

E. Lease No. 3555A expired on October 31, 2012 and is in holdover status. While Lease No. 3555A is in holdover status, MVR continues to manage three ponds (respectively, Pond F2, Pond F3 West, and Pond F3 East) located on the Master Lease Premises. MVR uses Pond F2 as a supplemental water source for its SMP 32 quarry operations. MVR owns and maintains two (2) pumps (“**MVR Pumps**”) to manage the water elevation in Pond F3 East located in the Existing SMP 24 Premises.

F. SFPUC is currently engaged in constructing the San Antonio Backup Pipeline Project (the “**Project**”) in the vicinity of the Master Lease Premises. MVR and City have met on several occasions to discuss the City’s need to achieve and maintain a prescribed water elevation in Pond F3 East during construction of certain Project improvements to Pond F3 East.

G. Pursuant to Section 17 of the Master Lease, the provisions of which were incorporated by reference into Section 7 of the Sublease, the SFPUC intends to authorize its contractor for the Project, Ranger Pipelines, Inc. (“**Ranger**”), to install two (2) new pumps (“**City Pumps**”), as shown in the drawing attached as **Exhibit A**, at the City’s cost to manage the water level in Pond F3 East. City and MVR desire to enter into this Agreement to set forth the parties’ respective rights and obligations with respect to (i) the installation and use of the City Pumps on the Existing SMP 24 Premises, and (ii) the use of MVR’s existing equipment, to manage the water elevation in Pond F3 East.

H. An environmental impact report (“EIR”) was prepared for the Project, and the final EIR (“FEIR”) was certified by the City’s Planning Commission on September 20, 2012, by Motion No. M-18705. The FEIR considered the environmental impact of lowering the water level in Pond F3 East as required for Project construction.

I. On September 25, 2012, by Resolution No. 12-0174, SFPUC’s Commission approved the Project, adopted findings (“CEQA findings”) and a Mitigation, Monitoring and Reporting Program required by the California Environmental Quality Act (“CEQA”), and authorized SFPUC’s General Manager to exercise any of the SFPUC’s rights under existing leases through Project-related agreements with lessees in the vicinity of the Project to accommodate the Project schedule and construction activities. The Project CEQA findings are incorporated herein by this reference.

J. The executive officer signing this Agreement has reviewed and considered the FEIR and the record as a whole, finds that the FEIR is adequate for SFPUC’s use in executing this Agreement, and further finds that since the FEIR was finalized there have been no substantial project changes and no substantial changes in Project circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR.

K. In the event of a conflict between this Agreement and Lease No. 3555A, the terms and conditions of this Agreement shall prevail.

## AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, the parties hereby agree as follows:

1. **Term.** This Agreement shall commence on the Effective Date and expire on the later of (a) June 30, 2015, or (b) the date of final completion of SFPUC’s Project (“Term”), unless the parties extend the Term of this Agreement in writing. Notwithstanding the foregoing, if MVR’s holdover tenancy of the Existing SMP 24 Premises terminates without the parties entering into a new lease of the premises, then either party, by giving not less than ninety (90) days notice to the other, may terminate this Agreement early, effective on the termination date specified in such notice which shall be no sooner than the termination date of the tenancy.

2. **Ranger Obligations.** City will cause Ranger to install the City Pumps in Pond F3 East as follows (“Pump Installation”). Ranger shall:

a. Remove the MVR Pumps and replace them with the City Pumps, which the SFPUC shall purchase at its sole cost and continue to own after installation in Pond F3 East;

b. Deliver the removed MVR Pumps to MVR’s premises at 7999 Athenour Way, Sunol, California 94586;

c. Install five hundred (500) feet of 10-inch HDPE piping to extend the reach of the existing HDPE lines in order to accommodate lowering the water level to elevation 152 feet, North American Vertical Datum of 1988 (“**NAVD 1988**”) in the center of Pond F3 East;

d. Install fusible pipe flange ends, gaskets, and hardware to bolt the new pipe sections to the in place sections maintained by MVR;

e. Install additional cable and floats to extend motor control cables to the City Pumps in order to accommodate lowering the water level to elevation 152 feet (NAVD 1988), in the middle of Pond F3 East;

f. Connect the City Pumps to MVR’s existing pump control panel, switchgear, electrical motor cables and other water management equipment at Pond F3 East;

g. Reimburse MVR for the cost of electrical meters (including installation) to measure MVR’s power consumption arising from use of the City Pumps; and

h. Relocate electrical wiring and hoses currently serving MVR’s pumps.

**3. MVR’s Obligations.**

a. MVR shall make diligent, good faith efforts to cooperate with the Pump Installation by Ranger on behalf of the SFPUC.

b. MVR shall have the sole responsibility to operate the MVR Pumps and the City Pumps in accordance with the terms of this Agreement.

c. Upon receipt of notice from SFPUC to commence pumping (which notice may be delivered by email to Tom Jackson, MVR’s plant manager at Tom.Jackson@hanson.biz) (the “**Start Notice**”), MVR shall commence dewatering Pond F3 East, first using the MVR Pumps if the Start Notice is delivered prior to the City Pump Installation, and then using the City Pumps after the City Pump Installation.

d. Except for any necessary down time in connection with the City Pump Installation, MVR shall conduct pumping as follows:

(i) Initially, prior to completion of construction of the slurry wall, MVR shall conduct pumping on a test basis (A) from 7 PM until 7AM, Monday through Friday, and (B) if City so directs by notice to MVR, 24 hours per day on weekends and City holidays. If City’s inspector determines that such pumping causes turbidity, City shall direct MVR to modify this pumping schedule or cease pumping altogether, as necessary, until after the slurry wall is constructed.

(ii) Once the slurry wall is completed, MVR shall continuously conduct the pumping, twenty-four (24) hours per day, seven (7) days per week, as necessary to achieve and maintain the target pond elevation described in Section 4. City may adjust this pumping schedule if necessary, at City’s sole discretion, by giving notice to MVR.

(iii) Any notice from City to MVR under this **Section 3.d** may be delivered by email to Tom Jackson, MVR's plant manager, at Tom.Jackson@hanson.biz.

e. If and to the extent there is a conflict between MVR's obligations to pump water under this Agreement and MVR's rights and obligations under the applicable discharge permit, the applicable provisions of the discharge permit shall control.

**4. Target Pond Elevation.** MVR shall use its best efforts to assist SFPUC and Ranger to achieve a Pond F3 East elevation of 152 feet (NAVD 1988) by October 15, 2013, or such later date as may be directed by the SFPUC Assistant Sunol Regional Project Manager, and maintain such elevation for the remainder of the duration of the Project construction or as directed by the SFPUC Assistant Sunol Regional Project Manager.

**5. Use and Discharge of Pumped Water.** MVR shall manage all water pumped from Pond F3 East at the manifold connection to MVR's existing system, in accordance with the provisions of Surface Mining Permit 24, order no. R2-2008-0011 of the Bay Area Regional Water Quality Control Board, National Pollutant Discharge Elimination System Permit No. CAG982001 and any other applicable permits.

**6. Repair and Maintenance of City Pumps.** Throughout the Term, City shall cause Ranger to maintain and repair the City Pumps at the SFPUC's cost. MVR shall immediately notify the SFPUC Assistant Sunol Regional Project Manager in the event the City Pumps require maintenance or repair pursuant to the Notice section below.

**7. Monitoring of Pond Elevation.** City shall be responsible for monitoring the water elevation in Pond F3 East during the Term, at City's cost.

**8. Reimbursement of Electricity Charges.** Throughout the Term, City shall cause Ranger to reimburse MVR for its electricity costs to pump water under this Agreement. Such electrical usage is separately metered, but the power company combines the cost of such power with the cost of other electrical usage on MVR's electrical bill. MVR shall read the meters on a monthly basis and keep a log of the electricity usage to power the pumps as reflected on the meters. MVR shall provide Ranger with the monthly invoices from the utility company, together with a monthly calculation of City's pro-rata share of total billed electricity cost based on the separately metered City-related electricity usage. City shall have the right to inspect the meter(s) and examine, copy and audit MVR's log, books of account and pertinent data with respect to such electricity usage and costs. MVR shall cooperate fully with City and City's Agents in such examination. If any such inspection or audit shows that MVR overcharged for such costs, then MVR shall immediately upon notice reimburse such overpayment to City, together with interest thereon at the legal interest rate. Apart from reimbursement of power costs, this Agreement does not authorize any other reimbursement of costs.

**10. Hold Harmless.**

a. **Waiver of Hold Harmless Provisions.** Section 7 of the Sublease expressly incorporated the terms and conditions of Paragraph 22 of the Master Lease, entitled, *City to Be Held Harmless* ("**Hold Harmless Provision**"). City hereby waives the effectiveness

of the Hold Harmless Provision solely as to MVR's obligations stated in Sections 3.b, 3.c, and 3.d of this Agreement. Except as expressly waived by the City in this Section 10, the Hold Harmless Provision shall continue to be in full force and effect.

b. **Hold Harmless.** City shall indemnify and save harmless MVR and its officers, agents and employees, from all liabilities, charges, claims, suits, damages, expenses (including counsel fees) and costs (collectively, "**Claims**") on account of or by reason of any death of or injury to any person or damage to property of any kind whatsoever, whether the person or property of City, its agents, employees, contractors or licensees or third persons, caused by or arising from (i) pumping the water from and/or lowering the level of Pond F3 East in accordance with this Agreement; (ii) delays in Project construction that may result if MVR's pumping of the water in accordance with this Agreement fails to achieve a Pond F3 East elevation 152 feet NAVD 1988 by the target date(s) set by SFPUC or if due to circumstances beyond MVR's control, MVR is unable to pump the water in accordance with this Agreement; or (iii) construction of the Project, except to the extent any such Claims are caused by or arise from the negligence or willful misconduct of MVR or its employees, contractors or agents or MVR's breach of this Agreement.

**11. Notice to the Parties.** Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the City and MVR required or permitted under this Agreement shall be in writing and shall be given (a) by personal delivery; (b) by United States registered or certified mail, first class postage prepaid, or (c) by reputable commercial courier, to the City or MVR at its respective addresses for notice designated below or such other addresses as either party may designate by written notice given in the manner provided in this Section. For convenience of the parties, copies of notices may also be given by telefacsimile or email to the facsimile number and/or email address set forth below, if any, or such other number or email address as may be provided from time to time by notice given in the manner required under this Agreement; however, neither party may give official or binding notice by telefacsimile or email. Any correctly addressed notice given by a means that affords the sender evidence of delivery, attempted delivery, or rejected delivery shall be deemed to have been given and received at the date and time of confirmed delivery, attempted delivery (provided delivery is attempted on a business day), or rejected delivery.

**MVR:** Mike F. Roth, VP and General Manager  
Lehigh Hanson West Region  
12667 Alcosta Blvd., Suite 400  
San Ramon, CA 94583

**City:** Assistant General Manager  
Water Enterprise  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102-3220

With a copy to: David Tsztoo, Assist. Sunol Regional Project Manager  
San Francisco Public Utilities Commission  
525 Golden Gate Ave., 9th Floor  
San Francisco, CA 94102  
Phone 415-934-5792

and to: David Tsztoo  
Sunol Office Trailer:  
8653 Calaveras Road, Suite B  
Sunol, CA 94586  
Phone: 925-233-4354  
Cell: 510-207-7711  
Email: dtsztoo@sflower.org

and to: Real Estate Director  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102-3220

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

**13. City's Standard Contract Provisions.**

a. **Nondiscrimination.** In the performance of this Agreement, MVR agrees not to discriminate against any employee, City employee or contractor working with MVR or any MVR contractor, applicant for employment with MVR or its contractors, or person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HN status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Submitting False Claims: Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to City for three times the amount of damages that City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of City 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

c. **Conflict of Interest.** Through its execution of this Agreement, MVR acknowledges that it is familiar with the provision of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

d. **Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

e. **Limitations on Contributions.** Through execution of this Agreement, MVR acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. MVR acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. MVR further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of such party's board of directors; such party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such party. Additionally, MVR acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

f. **MacBride Principles – Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

g. **Tropical Hardwood and Virgin Redwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

#### 14. Miscellaneous

(a) This Agreement may be amended or modified only by a written agreement signed by City and MVR. (b) This Agreement (including the exhibit(s) or attachment(s) hereto) and the agreements referenced herein contain the entire agreement between the parties concerning the subject of this Agreement, and all prior written or oral negotiations, discussions, understandings and permits are merged herein. (c) This Agreement shall be governed by California law and the City's Charter. (d) If either party commences an action against the other or for breach of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, if City uses its own in-house attorneys, "reasonable attorneys' fees" of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its in-house attorneys. (e) This Agreement does not create a partnership or joint venture between City and MVR as to any activity conducted by City or its Agents on, in or related to the Property. (f) The exhibits referenced in and attached to this Agreement and the Recitals set forth above are incorporated herein and made a part hereof. (g) The word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation", are used. (h) If any provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, provided that the remainder of this Agreement can be interpreted to give effect to the intention of the parties. (i) This Agreement shall be subject to the budgetary and fiscal provisions of City's Charter. There shall be no obligation for the payment of money by City or City under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. (j) This Agreement is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than the other party. (k) The omission by a party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions of this Agreement by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect



the right of the party to enforce such provisions thereafter. (l) Time is of the essence for this Agreement.

*[Signatures on following page]*


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates set forth below.

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

**MVR:**

**MISSION VALLEY ROCK Co.,** a  
California corporation

By: 

HARLAN L. KELLY, JR.,

General Manager  
San Francisco Public Utilities Commission

Date: August 23, 2013

By: 

Name: M. F. Roth

Its: V.P. & G.M.

Date: August 23, 2013

**APPROVED AS TO FORM:**

DENNIS J. HERRERA,

City Attorney

By: 

Carolyn Johnson Stein

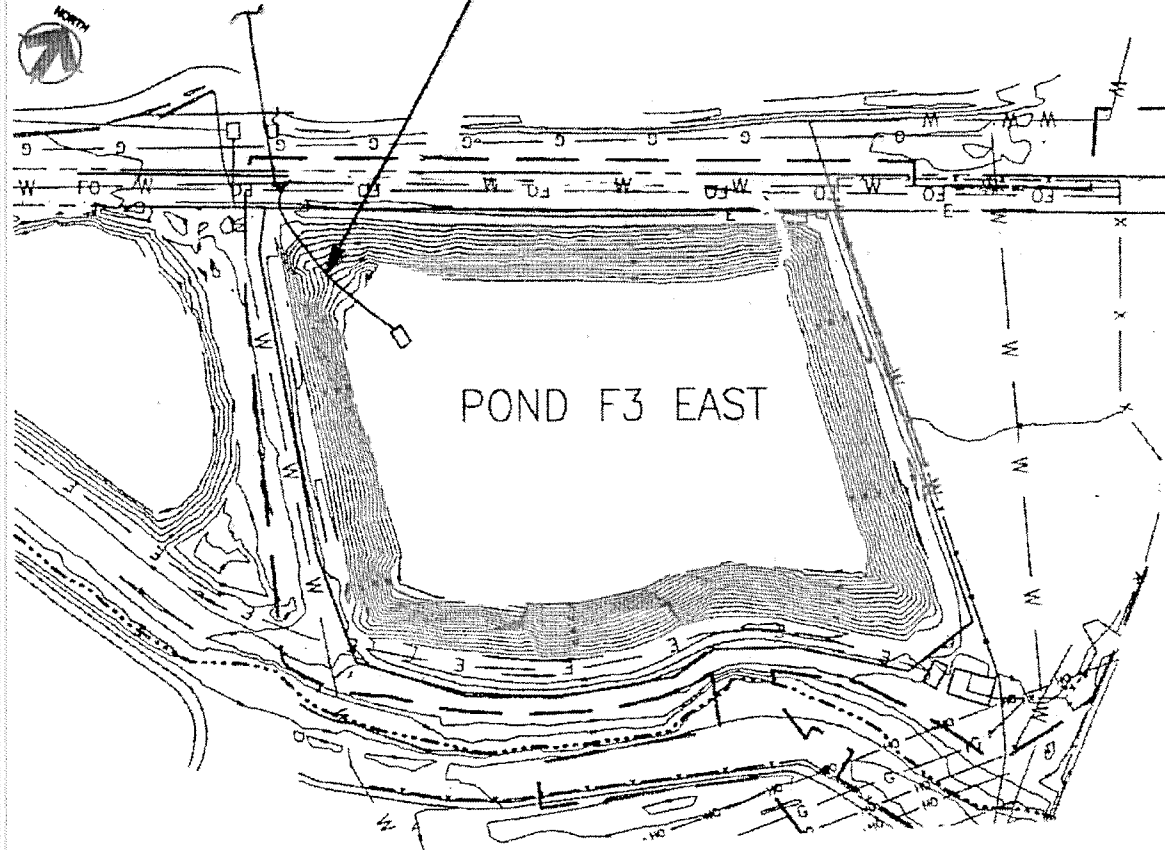
Deputy City Attorney



**EXHIBIT A**

**Drawing of Location of City Pumps**

2 - 8"Ø HDPE - SURFACE PIPE  
VERIFY IN FIELD



POND F3 EAST

HANSON SURFACE-MOUNTED PIPING

N.T.S.

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