

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

Recording requested by
and when recorded mail to:

San Francisco Public Works
Bureau of Street-Use and Mapping
Office of the City and County Surveyor
49 South Van Ness Avenue
Suite 300
San Francisco, CA 94103

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE

**POTRERO POWER STATION MIXED-USE DEVELOPMENT PROJECT
DEVELOPMENT PHASE 1
PUBLIC IMPROVEMENT AGREEMENT**

Affecting Assessor Parcel Numbers: Block 4175, Lot 027; Block 4175, Lot 026; Block 4232, Lot 019; Block 4232, Lot 022; Block 4232, Lot 020; Block 4232, Lot 021; Block 4232, Lot 023; Block 4175, Lot 025; Block 4232, Lot 017; Block 4175 Block 022; Block 4232, Lot 018; Block 4232, Lot 014; Block 4175, Lot 020; Block 4175, Lot 021; Block 4232, Lot 016; Block 4232, Lot 015; Block 4175, Lot 023; Block 4232, Lot 011; Block 4232, Lot 012; Block 4175, Lot 024; Block 4175, Lot 019; Block 4175, Lot 028; Block 4232, Lot 013

Pertaining to a re-subdivision of current Assessor Parcel Block 4175, Lot 002; Block 4175, Lot 017; Block 4232, Lot 001; Block 4232, Lot 006

Situs: NO SITUS ADDRESS

FINAL MAP NO. 10714: The area situated west of Illinois Street, northerly of 23rd Street, southerly of 22nd Street, San Francisco, California

Owner: California Barrel Company LLC

PUBLIC IMPROVEMENT AGREEMENT
(POTRERO POWER STATION PHASE 1)

This PUBLIC IMPROVEMENT AGREEMENT (this “Agreement”) dated for reference purposes only as of _____ 2022, is entered into as of _____, 2022 (the “Effective Date”), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California (“City”) and CALIFORNIA BARREL COMPANY LLC, a Delaware limited liability company, its successors and assigns (“Subdivider”). The City and Subdivider are also sometimes referred to individually as a “Party” and together as the “Parties”.

RECITALS

A. Subdivider and the City are parties to a Development Agreement dated for reference purposes only as of September 22, 2020 and recorded in the Official Records of the City and County of San Francisco (the “Official Records”) on October 2, 2020 as Document No. 2020025312 (as amended from time to time, the “Development Agreement”).

B. Pursuant to the Development Agreement, Subdivider is engaged in subdividing the property that is subject to proposed “Final Map No. 10714” (“Final Map”) consisting of approximately 20.99 acres, as shown therein (“Property”). A tentative subdivision map, entitled “Tentative Final Map 10714”, being a 35 Horizontal Lot and 13 Vertical Lot Subdivision, and authorizing up to 1,419 Residential Condominium Units, up to 110 Commercial Condominium Units, and up to 3,625 Parking Units on the Property (“Tentative Map”) was approved by the Director of the Department of Public Works by Order 205501 (“Director”, with references to Director also including the Director’s designee where authorized by law), acting as the advisory agency for purposes of the Subdivision Map Act (“Advisory Agency”), subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated October 4, 2021 (the “Conditions of Approval”).

C. Pursuant to the San Francisco Subdivision Code (the “Code”) and the San Francisco Subdivision Regulations (the “Subdivision Regulations”), the Tentative Map, and the Conditions of Approval, the Final Map irrevocably offers for dedication (i) interests of real property (Lots A,

B, C, D, and F) for public street and utilities use, and (ii) public improvements from Subdivider, as described herein.

D. The Property is a component of the Project Site of the Potrero Power Station Mixed-Use Development Project (the “Project”), approved on April 21, 2020 by the Board of Supervisors pursuant to Ordinance No. 0062-20 (File No. 200040) approving the Development Agreement, waiving or modifying certain provisions of the Administrative Code, Planning Code, Subdivision Code (including exceptions to the Subdivision Regulations detailed in Exhibit Y of the Development Agreement), and Zoning Map, and adopting environmental findings under CEQA (including the MMRP and a statement of overriding considerations), public trust findings, and findings of consistency with the General Plan and Planning Code priority policies, Ordinance 0061-20 (File No. 200039), amending the Planning Code and the Zoning Maps to establish the Power Station Special Use District and Height and Bulk districts, Ordinance 0064-20 (File No. 200174), and amending the General Plan. The Project is comprised of multiple Development Phases (as more particularly described in the Development Agreement). This Agreement pertains to the Required Infrastructure (as defined below) proposed by Development Phase 1.

E. In Public Works Order No. 206796, the Director granted certain exceptions and modifications to the Code and Subdivision Regulations pertaining to design and construction of Required Infrastructure and deferral of certain documents required by the Conditions of Approval.

F. Pursuant to the Development Agreement, Subdivider is obligated to construct horizontal infrastructure and public improvements within the Property. Such infrastructure and public improvements contemplated are described in the Infrastructure Plan attached to the Development Agreement as Exhibit G (as may be amended from time to time, the “Infrastructure Plan”), Tentative Final Map 10714, and Final Map 10714, and are more particularly described in those certain improvement plans identified in Exhibit A-1 (as such plans are revised from time to time, the “Plans and Specifications”). The Plans and Specifications provide for the construction, installation and completion of the horizontal infrastructure and public improvements identified therein (the “Required Infrastructure”). The Required Infrastructure includes improvements that the Development Agreement and Infrastructure Plan anticipate would be (i) offered for dedication to the City, and subsequently dedicated for public use, and accepted for maintenance and liability

by the Board of Supervisors upon completion pursuant to Section 6 (“Publicly Owned Infrastructure”), (ii) private improvements in the public right-of-way to be owned, operated, and maintained by entities other than the City, including Subdivider, fronting property owner, Management Association, or private utility providers such as service conduits and vaults for PG&E, AT&T, Comcast, Clear Channel or other telecommunications or internet providers identified in Exhibit A-2 (“Privately Owned Infrastructure”), and (iii) interim facilities (“Interim Facilities”), described more fully below and identified in Exhibit A-3. Interim Facilities may or may not be Accepted by the City and are anticipated to be replaced in a later Development Phase by Publicly Owned Infrastructure. The forms of infrastructure mentioned above collectively comprise the Required Infrastructure. The estimated costs of completing the Required Infrastructure are described in Exhibit B (the “Estimated Costs”). Copies of the Plans and Specifications are on file with the San Francisco Department of Public Works (“Public Works”).

G. The access, operation, and maintenance requirements for Privately Owned Infrastructure in the public right-of-way that will be owned by Subdivider or its assignee shall be set forth in a Major Master Encroachment Permit (“MMEP”). In addition, Subdivider intends to enter into an agreement, pursuant to San Francisco Charter section 16.129(c) for the private maintenance of any City-owned street trees.

H. The San Francisco Port owns the Pier 70 Property (as defined below), which is immediately to the north of the Property and on which a future development project (the “Pier 70 Project”) is expected to be constructed in accordance with that certain Development Agreement dated as of May 2, 2018 (the “Pier 70 DA”), by and between the City and FC PIER 70, LLC, a Delaware limited liability company (“P70 Master Developer”). The “Pier 70 Property” is the approximately 28 acres of developed and undeveloped land located in the City defined as the “28-Acre Site” in the Pier 70 DDA.

I. The Development Agreement (through the Infrastructure Plan) requires Subdivider to construct a separated sewer pump station located near Delaware Street (the “PPS Pump Station”) to address sewer flows arising from the PPS Project, or, alternately, in lieu of constructing the PPS Pump Station, connect the PPS Project to the Pier 70 Project’s sewer system within the first phase of horizontal improvements (the “Northern Connection”). The Northern Connection requires

Subdivider and/or Pier 70 Master Developer to construct improvements in the portion of Maryland Street on the Pier 70 Property extending from the boundary of the PPS Property at the intersection of Maryland Street and Craig Lane to the intersection of Maryland Street and 22nd Street on the Pier 70 Property.

J. The Conditions of Approval specify that Subdivider must permit and construct the PPS Pump Station, or the Northern Connection, within the Master Tentative Map area, or connect to the Pier 70 sewer system within the first phase of horizontal improvements. Subdivider is also obligated to obtain an agreement with Pier 70 Master Developer defining roles and responsibilities for the construction of the Northern Connection and the associated upsizing of the SFPUC's 20th Street pump station; submit (or ensure that Pier 70 Master Developer has submitted) an amended Infrastructure Plan(s) (or other agreement) which obligates Subdivider and/or Pier 70 Master Developer to construct (or pay for) the upsizing of the 20th Street pump station to accommodate both the PPS Project sewer flows and full build-out and the upsizing required to achieve zero discharges in a typical year, other agreements that may become necessary based on the proposed work, and, if applicable, a cost sharing agreement between Subdivider, Pier 70 Master Developer, and the City.

K. The Implementation Agreement described in Recital M details the roles and responsibilities of Subdivider, Pier 70 Master Developer, SFPUC, and Port to further describe and achieve the requirements described in Recital J.

L. Subdivider has chosen to pursue the Northern Connection. The Northern Connection will be constructed via one of two methods. Under the first method (the "Maryland Street Connection"), P70 Master Developer would contemporaneously design and construct all surface and subsurface utility improvements in the Pier 70 Property constituting Maryland Street (including sidewalks, street lights, curbs, sewer improvements serving the Pier 70 Project and other street improvements and a sanitary sewer pipe completing the Northern Connection, consistent with the Pier 70 Infrastructure Plan. Under the second method (the "SFPUC Sewer Connection"), P70 Master Developer would construct roadway improvements and associated infrastructure improvements (including a sanitary sewer pipe completing the Northern Connection) prior to and separate from the construction of the Maryland Street Connection.

M. Subdivider, P70 Master Developer, and the City (operating by and through the San Francisco Port Commission (the “Port”) and the San Francisco Public Utilities Commission (“SFPUC”) have agreed in concept to that certain Northern Connection Implementation Agreement (the “Implementation Agreement”), setting forth the allocation of rights and obligations related to construction, ownership, maintenance, and operation of the Maryland Street Connection and the SFPUC Sewer Connection. A form of the Implementation Agreement is attached as Exhibit G.

N. It is contemplated that, whether the Northern Connection is constructed via the Maryland Street Connection or the SFPUC Sewer Connection, the sanitary sewer pipe completing the Northern Connection will be offered for Acceptance. Plans for the SFPUC Sewer Connection are included as Exhibit C, and the SFPUC Sewer Connection and associated improvements are included in the Required Infrastructure.

O. The Interim Facilities include (i) a low-pressure water main located in Humboldt Street (the “Humboldt LPW Connection”) (as depicted on Exhibit D), (ii) improvements for the SF Sewer Connection, if built, (iii) interim sidewalks adjacent to future Development Phases, and (iv) interim paving for a stormwater outfall that will be replaced in a future Development Phase, all as depicted on Exhibit A-3.

P. The Humboldt LPW Connection will be constructed to SFPUC standards in Development Phase 1, but will be replaced once the final improvements within Maryland Street, Georgia Street and Humboldt Street are constructed in later Development Phases. Prior to Acceptance, the Humboldt LPW Connection will be operated by the SFPUC pursuant to an interim operating agreement, under which Subdivider will be responsible for certain costs of operating the Humboldt LPW Connection. After Acceptance, the Humboldt LPW Connection will be owned and operated by the SFPUC within rights described in an Easement (Exhibit E).

Q. The Code provides that before a final subdivision map or parcel map is approved by the City, Subdivider shall have either (i) installed and completed all of the public improvements required by the City and detailed in the Plans and Specifications approved by the Director, or (ii) entered into an agreement with the City to install and complete, free of liens, all of such public

improvements within a definite period of time and provided appropriate security to ensure improvement securities to secure satisfactory completion of the work.

R. The City and Subdivider, desire to enter into this Agreement in order to permit the approval and recordation of the Final Map by the City (including the dedications contained therein), to implement the Conditions of Approval, and to simultaneously satisfy the security provisions of the Subdivision Map Act, the Code, and the Development Agreement.

S. Except as specifically defined herein, capitalized terms shall have the meaning given in (i) the Code, (ii) the Development Agreement, (iii) the Subdivision Regulations, and (iv) the Plans and Specifications.

NOW, THEREFORE, in order to ensure satisfactory performance of Subdivider under the Code, Subdivider and the City agree as follows:

1. Recitals. The above recitals are true and correct, and are incorporated into this Agreement.

2. Subdivider's Obligations.

(a) Required Infrastructure. Subdivider shall, in good and workmanlike manner, furnish all necessary materials and complete the Required Infrastructure in conformity with the Plans and Specifications as described in Exhibit A-1.

(b) Completion. Subdivider shall complete the Required Infrastructure in accordance with Section 6(a) on or within two (2) years following the recordation of the Final Map. The period of time provided in this condition may be extended upon application by Subdivider and approval by the Director pursuant to Section 4(b) or may be extended by operation of Section 10(c).

(c) Other Required Documentation.

(i) Prior to the Director's submittal of this Agreement to the City's Board of Supervisors ("Board of Supervisors"), Subdivider has provided executed and recorded copies of all the documents, agreements and notices required pursuant to Exhibit E, unless deferred

by the Director, in writing, until the time Subdivider delivers a Letter of Intent to Request Notice of Completion, pursuant to Section 6(a). Further, certain Conditions of Approval have not been satisfied at the time of Final Map approval. The Director has determined that it is acceptable to defer compliance for the satisfaction of these Conditions of Approval for purposes of the Subdivision Map Act, and the subject Conditions of Approval and deferred compliance event for each Condition of Approval is shown in Exhibit F.

(ii) At the time of request for a Notice of Completion, pursuant to Section 6(a), for any Required Infrastructure, Subdivider shall provide all documents required pursuant to Exhibit H, plus any other material previously deferred by the Director in item (i) above, unless deferred by the Director in writing until the time of a request for Acceptance pursuant to Section 6(b). In addition, Subdivider shall furnish to Public Works and, if requested, the City Department of Building Inspection, as-built plans of the completed Required Infrastructure or portion thereof, in both electronic (in a reasonably current version of AutoCAD and/or another digital format acceptable to Public Works) and Mylar formats, and any reports required by any related Plans and Specifications.

(iii) At the time of a request for Acceptance of any Required Infrastructure pursuant to Section 6(b), Subdivider shall provide all the documents required pursuant to Exhibit I, plus any other materials previously deferred by the Director pursuant to subsections (i) and (ii) above. In addition, as part of compliance with this Section 2, Subdivider shall coordinate with the City and assist in the City's process for the subsequent dedication and Acceptance of the Required Infrastructure by (i) providing necessary maps, legal descriptions and plats for street openings, proposed easements and/or dedications for right of way or utility purposes and for relinquishment of existing rights of access and utilities associated with on-site and off-site development, and (ii) executing easement agreements or grant deeds, or modifying existing easements or grant deeds consistent with the Conditions of Approval.

3. Improvement Security.

(a) Security. Subdivider has furnished and delivered to the Director bonds, in favor of the City, and which are attached as Exhibit J-1, J-2, and J-3 and approved by the City

Attorney, from an issuer approved by the Director, securing the installation and completion of the Required Infrastructure as follows:

(i) Performance bonds in the amount of THIRTY MILLION NINE HUNDRED SEVENTY-NINE THOUSAND DOLLARS (\$30,979,000.00 -- 100% of estimated cost of completion of the construction and installation of the Required Infrastructure as determined by the Director) to secure the satisfactory performance of Subdivider's obligations (Exhibit J-1); and

(ii) A payment bond or other acceptable security in the amount of FIFTEEN MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$15,489,500.00 -- 50% of the estimated cost of completion of the Required Infrastructure as determined by the Director) as guarantee of payment for the labor, materials, equipment, and services required for the Required Infrastructure (Exhibit J-2).

(iii) A monument bond in the total amount of FOURTEEN THOUSAND DOLLARS (\$14,000.00), representing 100% of the cost of installation of twenty-six (26) monuments in as guarantee of payment for the labor, materials, equipment, and services required for furnishing and installing required survey monuments and to pay the Subdivider's engineer or surveyor for said work (Exhibit J-3).

(b) Other Acceptable Security. In lieu of providing any of the security described in Section 3(a), Subdivider may, subject to the approval of the Director, provide a deposit or other security as described in Section 66499 of the Government Code. Any security provided under Section 3(a) or this Section 3(b) shall be referred to collectively as the "Security".

(c) Use of Security. If the Required Infrastructure is not completed within the time periods specified in Section 2(b) and such period is not extended by the City or as otherwise provided under this Agreement, or Subdivider has not satisfactorily corrected all deficiencies during the Warranty Period, as specified in Section 9(a), the Security may, by resolution of the Board of Supervisors, be used by the City for completion of the Required Infrastructure in accordance with the Plans and Specifications and for the correction of any such deficiencies.

(d) Development Agreement Security. The security requirements of this Agreement shall be read and constructed in accordance with the requirements of the Code and the Development Agreement, including but not limited to Section 9.4.4 thereof. Nothing in this Agreement shall alter the City or Subdivider's rights and remedies under the Development Agreement or the security to be provided by Subdivider under the Development Agreement, except as provided in the Development Agreement.

(e) Security for SF Sewer Connection. For avoidance of doubt, the performance and payment bonds included as Exhibit J-1 and Exhibit J-2 reasonably secure installation and completion of the SFPUC Sewer Connection (the "SFPUC Sewer Connection Security").

4. Construction of the Required Infrastructure.

(a) Permits and Fees. Subdivider shall not perform any of the Required Infrastructure work until all required permits have been obtained for the portion of work involved, and all applicable fees, including inspection and testing fees, have been paid. In addition, no work shall commence until Subdivider has submitted to the City and the City has approved all required items described in Section 2(c) and any additional requirements of and authorizations specified in the Code, Subdivision Regulations, Conditions of Approval, and this Agreement, unless the Director, in his or her discretion, has granted a written deferral for one or more of these materials.

(b) Extensions. The Subdivider may request an extension of the time period specified in Section 2(b) for completion of the Required Infrastructure by written request to the Director. A request shall state adequate evidence to justify the extension and shall be made upon Subdivider's determination that it cannot reasonably meet the deadline in the time remaining for completion. The Director may request additional information and shall work expeditiously and with due diligence, and in good faith attempt to determine within thirty (30) days of the request whether to grant an extension of time. The Director's failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The time for completion additionally shall be automatically extended for the number of days past thirty (30) during which a request for an extension is pending a determination by the Director, as well as during any Excusable Delay, as provided in Section 10(c). The Director shall not unreasonably withhold or delay a request for an extension. The Director may reasonably condition an extension

subject to the terms of this Agreement and the conditions provided in the Code, including execution of an extension agreement and the extension of any Security. No extension approved hereunder shall limit or relieve a surety's liability, or provide an extension on any future obligation under this Agreement or the Development Agreement, if applicable (except as expressly stated in the approved extension).

(c) Revisions to Plans and Specifications. Requests by Subdivider for revisions, modifications, or amendments to the approved Plans and Specifications (each a "Plan Revision") shall be submitted in writing to the Director. Subdivider shall not commence construction of any proposed Plan Revision without approval by Public Works and until revised plans have been received and approved by the Director. If the Director approves an instructional bulletin, such approval shall be considered the Director's approval for purposes of this Subsection. The Director shall obtain the written consent of any affected City departments for all instructional bulletins. The affected City departments shall have 30 calendar days to review and comment on, or approve, any submitted instructional bulletin, from the time such bulletin is submitted by the Director. At the discretion of the Director, the Subdivider shall be responsible to produce a comprehensive set of plans, which includes all approved Plan Revisions to that point (a "Conform Plan").

(i) Any Infrastructure Plan amendments or other related documentation related to the Required Infrastructure and required for a Plan Revision shall be processed by the City in accordance with the Development Agreement and Infrastructure Plan, and with reasonable promptness, and approval of the Plan Revision shall not be deemed final until such amendment has been completed.

(ii) Any Plan Revision request by Subdivider shall be accompanied by (A) a statement explaining the need for or purpose of the proposed revision, and (B) drawings and specifications and other related documents showing the proposed Plan Revision in reasonable detail, consistent with the original Plans and Specifications.

(d) Temporary Construction Easement. Subdivider grants to the City for its own benefit and its respective Agents and Permittees a non-exclusive easement in gross to enter on, over, and across Lots E, L, K, , N, and O ("Easement Area") and such adjacent areas to

construct the Required Infrastructure under Section 3(c) as reasonably necessary for staging of construction equipment and materials for the purpose of constructing the Required Infrastructure, including conducting all activities necessary for the completion thereof, together with the right of ingress to and egress from the over any available adjacent areas (“Temporary Construction Easement”). In connection with the Temporary Construction Easement, the City shall have the right to fence off or otherwise secure portions of the Easement Area to prevent third parties from accessing the Easement Area in order to ensure the safety and security thereof, consistent with the City’s standard construction security practices for similar infrastructure components. In undertaking work within the Easement Area, the City shall use reasonable efforts to (i) complete all construction activities in an expeditious and diligent manner; and (ii) minimize disruption to Subdivider’s use of Subdivider’s of the Easement Area and adjacent land. The term of the Temporary Construction Easement shall commence upon occurrence of both (i) a Default (as defined in Section 10(d) of this Agreement) by Subdivider resulting from a failure to perform its obligations of Section 2, and (ii) the Director’s delivery of notice to Subdivider of the commencement of the Temporary Construction Easement. The Temporary Construction Easement shall terminate automatically (without required approval by the Board of Supervisors) on the earliest of (1) Subdivider obtaining a Certificate of Conformity, or Notice of Completion for the applicable Required Infrastructure, (2) the City’s completion of the applicable Required Infrastructure, (3) expiration or sooner termination of this Agreement, or (4) the Director’s delivery of written notice to Subdivider of such termination. Consistent with the Infrastructure Plan, Subdivider shall own and be responsible for the maintenance and liability of any Required Infrastructure in the Easement Area, regardless of whether Subdivider or the City completes the Required Infrastructure, until such time as any such Required Infrastructure is Accepted by the Board of Supervisors, as applicable.

5. Release of Security. The Security, or any portions thereof, not required to secure completion of Subdivider’s obligation for construction or installation of the Required Infrastructure, to satisfy claims by contractors, subcontractors, and/or persons furnishing materials or equipment, or for setting monuments set forth on the Final Map (a form of bond for such monuments is appended hereto as Exhibit J-3), shall be released to Subdivider, or its successors in interest, or reduced, pursuant to the procedures below as appropriate:

(a) One Year Warranty Bond for Completed Required Infrastructure. Upon (i) the Director's issuance of a Notice of Completion or Certificate of Conformity, as applicable, for a portion of the Required Infrastructure in accordance with Section 6(a) or 6(e), as applicable, and (ii) a certification from the Clerk of the Board of Supervisors (or the Clerk's designee) that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Required Infrastructure have been filed against the City (any such claim a "Contractor Claim") prior to or within a 100-day period following the Notice of Completion or Certificate of Conformity, as applicable, for such Required Infrastructure, the Security shall be reduced to no less than ten percent (10%) of the original amount of the Security for such portion of the Required Infrastructure, for the purpose of warranting repair of any defect for said Required Infrastructure that occurs within one (1) year of the date of such Notice of Completion or Certificate of Conformity; provided, however, that if any Contractor Claim has been filed against the City, then the Security shall be reduced only to an amount equal to the amount of any and all such Contractor Claims filed or to ten percent (10%) of the original amount, whichever is greater.

(b) Partial Release of Security. Notwithstanding the release provisions in Section 5(a) and except as provided in Section 5(c), the Security may be reduced in conjunction with the Director's issuance of a Notice of Completion or Certificate of Conformity, as applicable, for any portion of the Required Infrastructure in compliance with Section 6(a) or 6(e), as applicable, to an amount determined by the Director that equals the actual cost of the completed portion of the Required Infrastructure for which the Notice of Completion or Certificate of Conformity, as applicable, is granted. Prior to the date that the conditions set forth in Section 5(c) below are satisfied, in no event, however, shall the amount of the Security be reduced below the greater of (i) the amount required to guarantee the completion of the remaining portion of the Required Infrastructure and any other obligation imposed by the Subdivision Map Act, the Code or this Agreement; or (ii) ten percent (10%) of the original amount of the Security. The Security remaining following any reductions provided for by Section 5(a) and this Section 5(b) is referred to herein as "Remaining Security".

(c) Release of Remaining Security. Remaining Security shall be released when all of the following have occurred:

(i) One (1) year following the date of (A) Acceptance (as defined in Section 6(b)) of the relevant portion of Publicly Owned Infrastructure or Interim Facilities (or for Privately Owned Infrastructure, Acceptance of the portion of Publicly Owned Infrastructure or Interim Facilities that functionally rely upon or are encumbered by such Privately Owned Infrastructure), or one year has passed since the date any claim of defect or deficiency of the relevant portion of Required Infrastructure has been corrected or waived in writing by the Director; and

(ii) The Clerk of the Board of Supervisors (or the Clerk's designee) certifies that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Required Infrastructure have been filed against the City, all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security approved by the Director.

(d) Special Provisions for Release of Security for SFPUC Sewer Connection. In the event the Northern Connection is constructed via the SFPUC Sewer Connection, the provisions of this Section 5 shall apply; however, in the event P70 Master Developer and City execute a public improvement agreement that secures installation and completion of the Maryland Street Connection, the Security shall be reduced in an amount equal to the estimated cost of the SFPUC Sewer Connection included in Exhibit B.

6. Completion and Acceptance of Publicly Owned Infrastructure and Interim Facilities.

(a) Director's Inspection. No sooner than ninety (90) days prior to the date that Subdivider intends to request the Director issue a "Notice of Completion" (which, for avoidance of confusion, is a term used by Public Works as of the Effective Date) for any portion of the Publicly Owned Infrastructure or Interim Facilities, Subdivider shall make a written request to the Director of Subdivider's intent to initiate the Notice of Completion process ("Letter of Intent to Request Notice of Completion"). Upon delivery of a Letter of Intent to Request Notice of Completion, accompanied with any and all materials that are required under Section 2(c)(iii) related to the requested Notice of Completion and any other materials that the Director deferred in writing at the time of approval of this Agreement, the Director shall initiate the inspection within 90 days. If the Subdivider fails to submit a Letter of Intent to Request Notice of Completion, the

Director need not consider Subdivider's request for the Director's issuance of a Notice of Completion until such a Letter of Intent to Request Notice of Completion is submitted to the Director and ninety (90) days have passed from the submission of the Letter of Intent to Request Notice of Completion; provided, however, that the Director, in his or her discretion, may agree in writing to a period of less than ninety (90) days from receipt of the Letter of Intent to Request Notice of Completion to consider issuance of a Notice of Completion. If the Director determines that the Publicly Owned Infrastructure or Interim Facilities subject to the requested Notice of Completion have not been completed or does not satisfy the above requirements, Director shall notify Subdivider as soon as reasonably practicable of such determination together with a statement setting forth with particularity the basis for that determination. If the Director determines that the Publicly Owned Infrastructure or Interim Facilities have been completed in accordance with the Plans and Specifications to the satisfaction of the Director, and that such improvements are ready for their intended use, the Director shall issue the Notice of Completion.

(b) Acceptance. "Acceptance" by the City of any Publicly Owned Infrastructure or Interim Facilities, or portion thereof, for public use and maintenance shall be deemed to have occurred when:

(i) The Director has issued a Notice of Completion for such Publicly Owned Infrastructure or Interim Facilities, or portion thereof, in accordance with Section 6(a);

(ii) Subdivider submits a written request to the Director to initiate acceptance legislation or other appropriate action, before the Board of Supervisors as appropriate. Such submission shall include any and all materials for which the Director authorized deferral under Section 2(c); and

(iii) The Board of Supervisors by ordinance or other appropriate action, accepts such Publicly Owned Infrastructure or Interim Facilities, or portion thereof, for public use, and maintenance in accordance with the provisions of San Francisco Administrative Code Section 1.52 and Subdivider's maintenance and warranty obligations under and Section 9(a).

(c) Offers of Dedication. The owners' statements on the Final Map include or shall include certain irrevocable offers of dedication of improvements, easements shown on the

map, easements by agreement, and real property in fee simple. In addition: the offers of dedication of improvements shall be made by separate instrument(s); the offers of dedication of real property in fee simple shall be made by separate instrument(s) and separate quitclaim deed(s); and the offers of dedication of easements shall be made by separate instrument(s). The Board of Supervisors shall accept, conditionally accept, or reject such offers. The City, at its discretion, may accept these easements at its convenience through formal action of the Board of Supervisors or as otherwise provided in local law. The Board of Supervisors shall also by ordinance accept, conditionally accept, or reject for public right-of-way and utility purposes Publicly Owned Infrastructure, and Interim Facilities (or a portion thereof) in accordance with Section 6(b). The Final Map includes certain offers of dedication as more particularly set forth therein. Upon the Director's issuance of a Notice of Completion for the Publicly Owned Infrastructure, or Interim Facilities, or portion thereof, in accordance with Section 6(a), the Board of Supervisors shall by ordinance or other appropriate action accept, conditionally accept, or reject such offers.

(d) Dedication. In addition to accepting improvements, the City shall, except as set forth in Section 6(e), dedicate the Publicly Owned Infrastructure, or Interim Facilities to public use and shall designate them for their appropriate public uses.

(e) Privately Owned Infrastructure Shall Not Be Publicly Dedicated. Subdivider shall not offer for dedication Privately Owned Infrastructure. The Privately Owned Infrastructure shall be owned, operated, and maintained by Subdivider subject to the requirements of the MMEP. The Privately Owned Infrastructure are integral components of the Required Infrastructure and are necessary components of a fully functional utility system. Promptly upon Subdivider's request, the City shall inspect Privately Owned Infrastructure, and the City shall issue a Certificate of Conformity for Privately Owned Infrastructure (or portions thereof) that meet the standard for "Notice of Completion" of Publicly Owned Infrastructure, set forth in Section 5. The Subdivider shall obtain a Certificate of Conformity for Privately Owned Infrastructure prior to City's Acceptance of Publicly Owned Infrastructure or Interim Facilities that functionally rely upon or are encumbered by such Privately Owned Infrastructure; provided, however, that the Director, in consultation with any affected City department, may grant an exception to this requirement on a case-by-case basis.

7. Subdivider's Maintenance Responsibility.

(a) General Maintenance and Liability Prior to Acceptance. Prior to Acceptance, Subdivider shall be responsible for the maintenance and repair of the Required Infrastructure and shall bear the liability regarding the same consistent with the Code; provided (i) that SFPUC and Subdivider intend to allocate maintenance and liability obligations for the Humboldt LPW Connection and other SFPUC Required Infrastructure such as low pressure water lines located in future public streets pursuant to operating agreements between SFPUC and Subdivider and (ii) that maintenance and repair responsibilities for the Northern Connection (whether constructed via the Maryland Street Connection or SFPUC Sewer Connection) shall be provided for in the Implementation Agreement. Subdivider shall be responsible for the maintenance and repair of Privately Owned Infrastructure pursuant to the MMEP.

(b) Maintenance and Liability Following Acceptance. Following Acceptance, and subject to Section 7(c) and Section 9(a), the City shall assume the responsibility of operating and maintaining and shall be liable for such Accepted Publicly Owned Infrastructure and Interim Facilities. City shall indemnify Subdivider and the officers, agents and employees of each of them from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims by third parties ("Losses") to the extent first arising from and after City's Acceptance of any applicable portion of the Accepted Publicly Owned Infrastructure or Interim Facilities, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of Subdivider. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City's cost of investigating any claims against the City. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible (or that City shall have right to call upon the Security) for the repair, replacement, restoration, or maintenance of the Accepted Publicly Owned Infrastructure or Interim Facilities damaged by the actions of third parties following Acceptance by the City or by ordinary wear and tear or harm or damage from improper maintenance or operation of the Accepted Publicly Owned Infrastructure or Interim Facilities by the City, or any agent or agency of the City.

(c) Privately Owned Infrastructure. The Required Infrastructure includes Privately Owned Infrastructure, facilities for which Subdivider shall bear the liability and responsibility for maintenance. The Parties understand and agree that Subdivider, its successor in interest as to one or more of the development parcels depicted on the Tentative Map, fronting property owner, Management Association (as such term is defined in the Development Agreement), or other private entity approved by the City, shall be responsible for the ongoing maintenance and liability of Privately Owned Infrastructure, as applicable. The responsibilities for the Privately Owned Infrastructure in the public right of way and the maintenance and liability obligations for such infrastructure shall be defined in a MMEP approved by the Board of Supervisors. The MMEP shall provide for the designation of any successor to Subdivider's responsibilities thereunder. Subdivider agrees that no portion of Privately Owned Infrastructure may be offered to the City for Acceptance. The Development Agreement anticipates that the maintenance obligations described herein for Privately Owned Infrastructure will be assigned to and assumed by a Management Association. Subdivider's assignment of such maintenance obligations to the Management Association is governed by the MMEP and Section 12.1 of the Development Agreement.

(d) Protection of Required Infrastructure. Subdivider may, but shall not be obligated to, allow access by the public to portions of the Required Infrastructure that have been constructed but not Accepted. In order to protect such Required Infrastructure from damage and to minimize Subdivider's exposure to liability until such time as the applicable Required Infrastructure, or portion thereof, is Accepted, Subdivider may erect a construction fence or other physical barrier around areas under construction, to be constructed in the future, or constructed but not Accepted, provided that Subdivider has procured all necessary permits and complied with all applicable laws. However, no construction fence or other physical barrier may be built or maintained if the Director determines that a construction fence or other physical barrier adversely affects public health or safety by unreasonably restricting the ingress and egress of the public to and from a public right of way. For purposes of the preceding sentence, if there exists an alternative means of ingress and egress other than the Required Infrastructure, then the Director may not determine that the construction fence or other physical barrier constitutes an unreasonable restriction of ingress and egress of the public to and from a public right of way.

8. Intentionally Deleted.

9. Warranty and Indemnity.

(a) Warranty. Except for the Maryland Street Connection, Subdivider covenants that all Required Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily for a period (a “Warranty Period”) of three (3) years for any pump station and (2) years for all other portions of the Required Infrastructure. Such Warranty Period shall begin upon the issuance of a Notice of Completion for the Publicly Owned Infrastructure, and Interim Facilities (or portion thereof) as specified in Section 1751.2 of the Code except that the Warranty Period for plant materials and trees planted as part of the Required Infrastructure shall not commence until the Director receives a certification from the City’s Construction Manager that a plant establishment period set in accordance with the Plans and Specifications has passed. Such plant establishment period shall not be more than two (2) years from the issuance of the applicable Notice of Completion. Such Warranty shall begin upon the issuance of a Certificate of Conformity for Privately Owned Infrastructure. During the Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director, inspect, correct, repair or replace any defects in the Required Infrastructure at its own expense. Should Subdivider fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or replacement be made before Subdivider can be notified (or prior to Subdivider’s ability to respond after notice), the City may, at its option, upon notice to Subdivider, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Subdivider shall reimburse the City for the reasonable, actual cost thereof. During the Warranty Period, the City shall hold Subdivider’s Remaining Security (as described in Section 5), to secure performance of Subdivider’s foregoing warranty obligations. Subdivider’s responsibility during the Warranty Period shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Required Infrastructure by the City, or any agent or agency of the City. Acceptance of Publicly Owned Infrastructure or Interim Facilities by the City shall not constitute a waiver of any defects. The required warranty for the Maryland Street Connection shall be provided for by the Pier 70 Master Developer, as provided in the Implementation Agreement.

(b) Indemnity. Section 4.10 (inclusive of Sections 4.10.1 and 4.10.2) of the Development Agreement shall apply to all work performed under this Agreement.

(c) Limitation on City Liability. The City shall not be an insurer or surety for the design or construction of the Required Infrastructure pursuant to the approved Plans and Specifications, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Required Infrastructure as specified in this Agreement, except as provided in Section 4.10 of the Development Agreement.

10. Miscellaneous.

(a) Final Map Recordation. The City, in accordance with the Code, shall record the Final Map with the County Clerk in the Official Records of the City and County of San Francisco promptly upon Board of Supervisors' approval of the Final Map. The City shall notify Subdivider of the time of recordation. In the event the Final Map is not recorded prior to the expiration of the Tentative Map, this Agreement shall be null and void.

(b) Independent Contractor. In performing its obligations under this Agreement, Subdivider is an independent contractor and not an agent or employee of the City.

(c) Excusable Delay. In the event of civil commotion, war, acts of terrorism, disease or medical epidemics, flooding, fire, acts of God that substantially interfere with carrying out the Project or any portion thereof or with the ability of Subdivider to perform its obligations under the Agreement (whether as a general matter and not specifically tied to Subdivider) ("Excusable Delay"), the City agrees to extend the time periods for performance of Subdivider's obligations under this Agreement impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Subdivider shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with Subdivider's ability to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Subdivider will be extended for the period of the Excusable Delay; provided, however, within thirty (30) days after the beginning of any such Excusable Delay, Subdivider shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that

Subdivider stops any work as a result of an Excusable Delay, Subdivider must take commercially reasonable measures to ensure that the Property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

(d) Attorneys' Fees. "Default" is defined in Section 9.3 of the Development Agreement. Should legal action be brought by Subdivider or the City against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing Party. For purposes of this Agreement, "reasonable attorneys' fees and costs" means the reasonable fees and expenses of counsel to the applicable Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney, and shall include all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Section 10(d), the reasonable fees of attorneys of the City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

(e) Notices.

(i) Any notice or communication required or authorized by this Agreement (as, for example, where a Party is permitted or required to "notify" the other, but not including communications made in any meet and confer or similar oral communication contemplated hereunder) shall be in writing and may be delivered personally, by registered mail, return receipt requested, or by reputable air or ground courier service. Notice, whether given by personal delivery, registered mail or courier service, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Such notices or communications shall, subject to the foregoing, be given to the Parties at their addresses set forth below:

In the case of a notice or communication to the Director of Public Works:

Director of Public Works
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Infrastructure Task Force

With a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Public Works General Counsel
Reference: Potrero Power Station Project

San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
Attn: Molly Petrick and John Roddy
Reference: Potrero Power Station Project

And in the case of a notice or communication to Subdivider:

California Barrel Company LLC
2325 3rd Street, #434
San Francisco, California 94107
Attn: Jamie Brown, Partner & General Counsel

with a copy to:

J. Abrams Law, P.C.
538 Hayes Street
San Francisco, California 94102
Attn: Jim Abrams, Esq.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(A) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;

(B) if applicable, the period of time within which the recipient of the notice must respond thereto;

(C) if approval is being requested, shall be clearly marked “Request for Approval under the Potrero Power Station Development Phase 1 Public Improvement Agreement”; and

(D) if a notice of disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

(ii) Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

(iii) Any notice or request for review, consent, or other determination or action by the Director shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: “POTRERO POWER STATION INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED.”

(f) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties, and upon transfer by Subdivider, Subdivider shall be released from its obligations hereunder. Any assignment of Subdivider’s rights and obligations under this Agreement shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the reasonable approval of the Director; provided, however, that if Subdivider assigns its rights under the Development Agreement with respect to the Property or any portion thereof, this Agreement shall be deemed automatically assigned to the same assignee without the Director’s approval so long as: (1) Subdivider provides notice of the intended assignment to the Director (which Subdivider shall endeavor to do within five days after providing any required notice to the City under the Development Agreement); (2) Subdivider provides to the Director a copy of the executed Development Agreement assignment and assumption (from which confidential information may be redacted but shall include the

transfer of rights and obligations under this Agreement); (3) the assignee provides replacement bonds that are consistent with Exhibits J-1, J-2, and J-3 in the amount required to secure any remaining obligations under this Agreement applicable to the transferred property; (4) the assignee provides proof of adequate insurance in the amount previously provided by Subdivider and by an insurer with an equal or better credit rating; (5) the assignee has obtained all real estate rights required under the Development Agreement for an assignment of the Development Agreement; and (6) the assignment requires assignee to perform any remaining obligations of this Agreement applicable to the Property subject to the assignment.

(g) Development Agreement. This Agreement is a Later Approval as defined in the Development Agreement. The City shall cooperate with Subdivider consistent with the terms of the Development Agreement, including, without limitation, in obtaining applicable approvals required for the construction of the Required Infrastructure. Nothing in this Agreement shall waive or other affect the City's, Subdivider's, and any Mortgagee's rights or obligations under the Development Agreement, including with regard to Subdivider's or Mortgagee's construction of and City's acceptance of the Required Infrastructure. In the event of any conflict between this Agreement and the Development Agreement, the terms of the Development Agreement shall prevail.

(h) Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by another party, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist upon and demand strict compliance by the other party with the terms of this Agreement thereafter.

(i) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and Subdivider, any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City, or Subdivider shall be for the sole and exclusive benefit of the Parties; except that, notwithstanding the foregoing, any Mortgagee (as such term is defined in the Development Agreement) may perform the obligations of this Agreement pursuant to Article 10 of the Development Agreement.

(j) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City and Subdivider. The Director of Public Works is authorized to execute on behalf of the City any amendment that the Director determines is in the City's best interests and does not materially increase the City's obligations or materially diminish the City's rights under this Agreement.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement may be electronically signed, and any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

(l) Interpretation of Agreement. Unless otherwise provided in this Agreement or by applicable law, whenever approval, consent or satisfaction is required of Subdivider or the City under this Agreement, it shall not be unreasonably withheld or delayed. Nothing in this Agreement limits the scope of review and certification of completed improvements required under Section 1751.2(b) of the Code. For avoidance of doubt, the requirements of Section 1751.2(b) of the Code are applicable to Subdivider by operation of this Agreement and the Subdivision Regulations, notwithstanding their codification in the Treasure Island and Yerba Buena Island subdivision code (Article 4 of the Code). Captions used in this Agreement are for convenience or reference only and shall not affect the interpretation or meaning of this Agreement. This Agreement shall in no way be construed to limit or replace any other obligations or liabilities which the Parties may have in the Development Agreement.

11. Insurance. Subdivider shall, at all times prior to Acceptance of the Required Infrastructure, comply with the insurance requirements set forth in the Development Agreement and/or any applicable permit to enter (as described in Section 7.3 of the Development Agreement). Subdivider shall furnish to the City from time to time upon request by the City's Risk Manager certificate of insurance (and/or, upon request by the City's Risk Manager a complete copy of any policy) regarding each insurance policy required to be maintained by Subdivider.

12. Recording.

(a) Recording Agreement. The Parties to this Agreement acknowledge that this Agreement shall be recorded against the title of the Property.

(b) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Subdivider's obligations and responsibilities under Sections 2 and 7, respectively. This Agreement shall not be interpreted as creating a lien or security interest against any parcel against which it is recorded, or to effect any secured interest now or in the future, as the obligations hereunder are personal to Subdivider and its successors and assigns as may be authorized pursuant to Section 10(f).

(c) Notice of Termination. At the time all the obligations and requirements specified in this Agreement are fully satisfied as determined by the Director in consultation with affected City departments, the Parties shall record a Notice of Termination, a draft of which is contained in Exhibit K. Alternatively, Subdivider may request the Director's authorization to record a Notice of Termination with respect to an individual parcel. In evaluating such a request, approval of which shall be in the Director's reasonable discretion, the Director shall consider with respect to the Required Infrastructure necessary to serve the parcel, whether: (i) all of the Required Infrastructure has been completed and accepted by the City, as applicable; (ii) all corresponding bond amounts have been released; (iii) all defects and punch list items have been addressed; and (iv) all warranty and guarantee periods have terminated.

IN WITNESS WHEREOF, the City and Subdivider have executed this Agreement in one or more copies as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

SUBDIVIDER

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: 
Name: Enrique Landa
Title: Managing Partner

[Signature Pages Continue]

State of California

County of San Francisco)

On July 14, 2022 before me, Gabrielle Meira Perez
(insert name and title of the officer)

personally appeared Enrique Lande,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)



CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:

Its: Director of Public Works

APPROVED AS TO FORM:

DAVID CHIU
CITY ATTORNEY

By:

Deputy City Attorney

State of California

County of _____)

On _____, 20__ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

LIST OF EXHIBITS

Exhibit A-1 – Plans and Specifications for Required Infrastructure

Exhibit A-2 – Privately Owned Infrastructure

Exhibit A-3 – Interim Facilities

Exhibit B – Estimated Costs

Exhibit C – SFPUC Sewer Connection

Exhibit D – Interim Facilities - Humboldt LPW Connection

Exhibit E – Documents required with Public Improvement Agreement

Exhibit F – Subdivider Letter Request for Deferral and Conditions for Deferred Compliance

Exhibit G – Form of Northern Connection Implementing Agreement

Exhibit H – List of documents required by City in order to issue a Notice of Completion

Exhibit I – List of documents required by the City in order to make a Request for Acceptance

Exhibit J-1 – Performance Bond

Exhibit J-2 – Payment Bond

Exhibit J-3 – Monument Bonds

Exhibit K – Notice of Termination

EXHIBIT A-1

Plans and Specifications for Required Infrastructure

The Potrero Power Station Development Phase 1 Street Improvement Permit Plans prepared by
CBG Civil Engineering, dated June 13, 2022.

EXHIBIT A-2

Privately Owned Infrastructure

In Public ROW

1. Shuttle Stop signage
2. Seating (benches)
3. Non-City Utility Systems, including conduits and vaults for PG&E, AT&T, Comcast, Clear Channel or other telecommunications or internet providers
4. Non-potable water distribution system

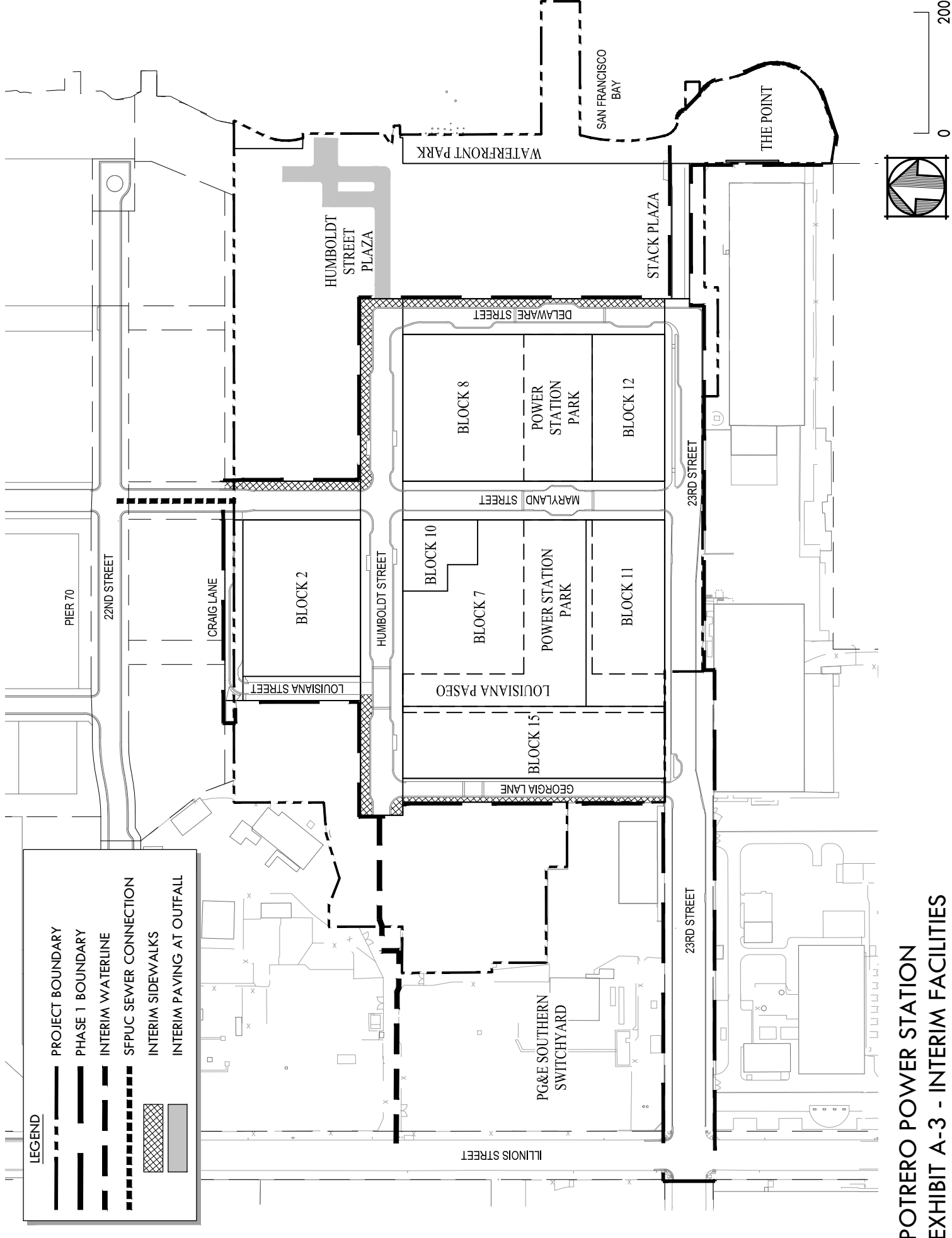
In Private Property Necessary for Public Street Improvements

1. Bollards
 - a. 23rd St. at Louisiana St.
 - b. 23rd St. at Bay Trail
 - c. Humboldt St. / Delaware St. at Humboldt Plaza
 - d. Power Station Park West at Maryland St.
2. Private segment of 23rd St.

EXHIBIT A-3

Interim Facilities

(see attached figure)



POTRERO POWER STATION
EXHIBIT A-3 - INTERIM FACILITIES

EXHIBIT B

Estimated Costs

See attached schedule of values



CIVIL ENGINEERS • SURVEYORS • PLANNERS

ENGINEER'S PRELIMINARY BOND ESTIMATE
PHASE 1 STREET IMPROVEMENTS PERMIT
POTRERO POWER STATION
SAN FRANCISCO, CALIFORNIA

May 6, 2022
Job No.: 2747-000

Item	Description	Quantity	Unit	Unit Price	Amount
<u>MOBILIZATION</u>					
1	Mobilization	1	LS	\$ 500,000	\$ 500,000
Subtotal Mobilization					\$ 500,000
<u>SEPARATED SANITARY SEWER</u>					
2	Dewatering	1	LS	\$ 300,000	\$ 300,000
3	12" Sewer Main	1,653	LF	\$ 300	\$ 768,645
4	10" Sewer Main	60	LF	\$ 280	\$ 27,000
5	8" Sewer Main	33	LF	\$ 200	\$ 514,470
6	48" Sewer Manholes	11	EA	\$ 12,500	\$ 137,500
Subtotal Separated Sanitary Sewer					\$ 1,747,615
<u>COMBINED SEWER</u>					
7	Dewatering	1	LS	\$ 350,000	\$ 350,000
8	18" Combined Sewer	336	LF	\$ 500	\$ 168,000
9	12" Combined Sewer	1,171	LF	\$ 375	\$ 439,125
10	48" Combined Sewer Manholes	3	EA	\$ 12,500	\$ 37,500
11	Curb Inlets	13	EA	\$ 8,000	\$ 104,000
12	Field Inlets	3	EA	\$ 7,000	\$ 21,000
13	Lateral Cleanout / Vent	6	EA	\$ 1,500	\$ 9,000
Subtotal Combined Sewer					\$ 1,128,625
<u>PUBLIC SEPARATED STORM DRAIN</u>					
14	Dewatering	1	LS	\$ 300,000	\$ 300,000
15	48" Storm Drain	147	LF	\$ 850	\$ 124,950
16	42" Storm Drain	190	LF	\$ 750	\$ 142,500
17	36" Storm Drain	289	LF	\$ 600	\$ 173,400
18	21" Storm Drain	503	LF	\$ 375	\$ 188,625
19	18" Storm Drain	1,344	LF	\$ 300	\$ 403,200
20	12" Storm Drain	1,073	LF	\$ 300	\$ 321,900
21	48" Storm Drain Manholes (12" - 21" Pipe)	22	EA	\$ 15,000	\$ 330,000
22	48" Storm Drain Manholes (36" Pipe)	4	EA	\$ 40,000	\$ 160,000
23	48" Storm Drain Manholes (48" Pipe)	6	EA	\$ 50,000	\$ 300,000
24	Curb Inlets	17	EA	\$ 8,000	\$ 136,000
25	Field Inlets	1	EA	\$ 7,000	\$ 7,000
26	Lateral Cleanout / Vent	10	EA	\$ 1,500	\$ 15,000
27	CDS UNIT	1	EA	\$ 300,000	\$ 300,000
28	Backflow Vault with Check Valve	1	EA	\$ 175,000	\$ 175,000
Subtotal Public Separated Storm Drain					\$ 3,077,575

2633 CAMINO RAMON, SUITE 350 • SAN RAMON, CALIFORNIA 94583 • (925) 866-0322 • www.cbandg.com
SAN RAMON • ROSEVILLE

Item	Description	Quantity	Unit	Unit Price	Amount
<u>PRIVATE SEPARATED STORM DRAIN</u>					
29	Dewatering	1	LS	\$ 100,000	\$ 100,000
30	21" Storm Drain	47	LF	\$ 375	\$ 17,625
31	18" Storm Drain	494	LF	\$ 300	\$ 148,200
32	12" Storm Drain	986	LF	\$ 300	\$ 295,800
33	8" Storm Drain	210	LF	\$ 150	\$ 31,500
34	6" Storm Drain	140	EA	\$ 145	\$ 20,300
35	48" Storm Drain Manholes (12" - 21" Pipe)	21	EA	\$ 15,000	\$ 315,000
36	Curb Inlets	4	EA	\$ 8,000	\$ 32,000
37	Field Inlets	15	EA	\$ 7,000	\$ 105,000
Subtotal Private Separated Storm Drain					\$ 1,065,425
<u>LOW PRESSURE POTABLE WATER</u>					
38	8" Water	4,890	LF	\$ 175	\$ 855,750
39	8" Gate Valves	22	EA	\$ 5,000	\$ 110,000
40	Fire Hydrants	15	EA	\$ 22,000	\$ 330,000
41	4" LP Water Lateral	14	EA	\$ 11,000	\$ 154,000
42	4" Meter Box & Backflow Preventor	14	EA	\$ 7,000	\$ 98,000
43	Test Station	10	EA	\$ 4,000	\$ 40,000
44	8" Fire Service Stub	13		\$ 15,000	\$ 195,000
45	6" Fire Service Stub	1	EA	\$ 10,000	\$ 10,000
46	Air Release Valve	13	EA	\$ 4,000	\$ 52,000
47	In Line Blow Off	13	Ea.	\$ 3,000	\$ 39,000
48	Connect To Existing LPW	4	Ea.	\$ 7,500	\$ 30,000
49	Relocate FDC	1	EA	\$ 3,500	\$ 3,500
Subtotal Low Pressure Potable Water					\$ 1,917,250
<u>AUXILIARY WATER SUPPLY SYSTEM</u>					
50	20" AWSS Water	2,240	LF	\$ 950	\$ 2,128,000
51	20" AWSS Gate Valve	3	EA	\$ 100,000	\$ 300,000
52	AWSS Fire Hydrants	4	EA	\$ 75,000	\$ 300,000
53	Test Station	4	EA	\$ 4,000	\$ 16,000
54	Connect 20" AWSS To Existing AWSS	2	EA	\$ 25,000	\$ 50,000
Subtotal AWSS Water					\$ 2,794,000
<u>NON-POTABLE WATER</u>					
55	8" Water	3,680	LF	\$ 150	\$ 552,000
56	8" Gate Valves	16	EA	\$ 5,000	\$ 80,000
57	4" NP Water Lateral	1	EA	\$ 11,000	\$ 11,000
58	4" Meter Box & Backflow Preventor	1	EA	\$ 7,000	\$ 7,000
59	2" NP Water Lateral	5	EA	\$ 7,000	\$ 35,000
60	2" Meter Box & Backflow Preventor	5	EA	\$ 5,000	\$ 25,000
61	Blowoff	6	EA	\$ 2,000	\$ 12,000
62	Test Station	7	EA	\$ 4,000	\$ 28,000
Subtotal Non-Potable Water					\$ 750,000

Item	Description	Quantity	Unit	Unit Price	Amount
<u>DRY UTILITIES</u>					
63	Joint Trench (<i>Substructure System</i>)	1	LS	\$ 2,500,000	\$ 2,500,000
64	Street Lighting	1	LS	\$ 850,000	\$ 850,000
Subtotal Dry Utilities					\$ 3,390,000
<u>ON-SITE STREET IMPROVEMENTS</u>					
65	Rough Grade	4,550	CY	\$ 12	\$ 54,600
66	Process Subgrade 36"	120,275	SF	\$ 1.50	\$ 180,413
67	Balance Uity / Subgrade	120,275	SF	\$ 1	\$ 120,275
68	Irrigation Sleeves	300	LF	\$ 150	\$ 45,000
69	CCSF 6" C&G with 1' Gutter	942	LF	\$ 50	\$ 47,100
70	CCSF 6" C&G with 2' Gutter	3,046	LF	\$ 50	\$ 152,300
71	CCSF 4" C&G with 1' Gutter	132	LF	\$ 50	\$ 6,600
72	CCSF 4" C&G with 2' Gutter	544	LF	\$ 50	\$ 27,200
73	4" Mountable C&G with 3' Gutter	35	LF	\$ 50	\$ 1,750
74	CCSF 6" Vertical Curb	737	LF	\$ 40	\$ 29,480
75	CCSF 4" Vertical Curb	35	LF	\$ 35	\$ 1,225
76	CIP Bio-Retention Walls	1,083	LF	\$ 200	\$ 216,600
77	Valley Gutter	554	SF	\$ 20	\$ 11,080
78	18" PCC Underslab	57,373	SF	\$ 9.50	\$ 545,044
79	4" AC Street	57,373.00	SF	\$ 3.20	\$ 183,594
80	8" CL2 AB - Vehicular PCC	23,743.00	SF	\$ 3.20	\$ 75,978
81	8" Vehicular PCC	22,235	SF	\$ 17	\$ 377,995
82	8" Decorative PCC	1,508	SF	\$ 17	\$ 25,636
83	Vehicular Pavers (<i>No. 8 & 57 Stone</i>)	3,143.00	SF	\$ 12	\$ 37,716
84	Vehicular Pavers (<i>Pavers</i>)	3,143.00	SF	\$ 25	\$ 78,575
85	4" AC / 8" CL2 AB (<i>Temp AC Humboldt</i>)	3,685.00	SF	\$ 5.75	\$ 21,189
86	4" AC / 8" CL2 AB (<i>Humboldt Street Plaza</i>)	13,708.00	SF	\$ 5.75	\$ 78,821
87	8" CL2 AB (<i>Overland Release @ Shoreline</i>)	7,745.00	SF	\$ 4.25	\$ 32,916
88	CIP Retaining Wall (<i>Craig Lane</i>)	350	LF	\$ 1,000	\$ 350,000
Subtotal On-Site Street Improvements					\$ 2,701,085
<u>STREET IMPROVEMENTS</u>					
89	Bio-Retention Excavation	815	CY	\$ 50	\$ 40,750
90	CIP Bio-Retention Wall	1,817	LF	\$ 200	\$ 363,400
91	CIP Bio-Retention Wall - Lateral Bracing	1,502	LF	\$ 150	\$ 225,300
92	Trench Drain At Bio-Retention Boxes	5	EA	\$ 2,500	\$ 12,500
93	Subgrade	58,796	SF	\$ 1	\$ 58,796
94	4.5" CL2 AB - Sidewalks	49,029	SF	\$ 4.50	\$ 220,631
95	3.5" PCC Sidewalks	49,029	SF	\$ 15	\$ 735,435
96	Curb Ramps Per City Standards	47	EA	\$ 2,200	\$ 103,400
97	6" CL2 AB - Driveways	6,565	SF	\$ 4.50	\$ 29,543
98	Driveways	6,565	SF	\$ 17	\$ 111,605
99	Pedestrian Pavers (<i>No. 8 & 57 Stone</i>)	3,202	SF	\$ 17	\$ 54,434
100	Pedestrian Pavers-Pavers	3,202	SF	\$ 25	\$ 80,050
101	Pedestrian Barricade	2	EA	\$ 2,000	\$ 4,000
102	Street Barricade	34	LF	\$ 600	\$ 20,400
103	Bollards	56	EA	\$ 1,200	\$ 67,200
104	Removable Bollards	25	EA	\$ 2,500	\$ 62,500
Subtotal Street Improvements					\$ 2,189,943

Item	Description	Quantity	Unit	Unit Price	Amount
<u>23RD STREET IMPROVEMENTS</u>					
105	Demo Existing AC/PCC	1	LS	\$ 300,000	\$ 300,000
106	Demo Existing RR Tracks	375	LF	\$ 50	\$ 18,750
107	Demo Existing Utilities	1	LS	\$ 1,000,000	\$ 1,000,000
108	Rough Grade 23rd Street	2,500	CY	\$ 30	\$ 75,000
109	Excavate For Light Weight Fill	8,370	CY	\$ 30	\$ 251,100
110	Light Weight Fill	4,460.00	CY	\$ 65	\$ 289,900
111	Process Subgrade 36"	87,060	SF	\$ 1.50	\$ 130,590
112	Subgrade (<i>Street/ Curbs / PCC</i>)	89,245	SF	\$ 1	\$ 89,245
113	Irrigation Sleeves	70	LF	\$ 150	\$ 10,500
114	CCSF 6" C&G with 1' Gutter	1,799	LF	\$ 50	\$ 89,950
115	CCSF 6" C&G with 2' Gutter	510	LF	\$ 50	\$ 25,500
116	CCSF C&G with Parking (<i>5-ft Wide</i>)	111	LF	\$ 80	\$ 8,880
117	CCSF 4" C&G with 2' Gutter	20	LF	\$ 50	\$ 1,000
118	4" Mountable C&G with 2' Gutter	458	LF	\$ 50	\$ 22,900
119	8" CL2 AB (<i>Match Existing Paving</i>)	18,725	SF	\$ 3	\$ 56,175
120	8" PCC Underslab	58,390	SF	\$ 9.50	\$ 554,705
121	4" AC Street/ Match Existing	77,115	SF	\$ 3.50	\$ 269,903
122	8" CL2 AB - Vehicular PCC	4,394	SF	\$ 3.20	\$ 14,061
123	8" Vehicular PCC	3,240	SF	\$ 17	\$ 55,080
124	8" Decorative PCC	1,154	SF	\$ 17	\$ 19,618
125	4" CL2 AB (<i>Bike Path</i>)	1,086	SF	\$ 3.20	\$ 3,475
126	3.5" PCC (<i>Bike Path</i>)	1,086	SF	\$ 9.50	\$ 10,317
127	PCC Band with Trapezoidal Delineator	369	LF	\$ 100	\$ 36,900
128	Trapezoidal Delineator	343	LF	\$ 75	\$ 25,725
129	CIP Bio-Retention Wall	132	LF	\$ 200	\$ 26,400
130	CIP Bio-Retention - Lateral Bracing	50	LF	\$ 150	\$ 7,500
131	Subgrade (<i>Sidewalk/ Driveways</i>)	18,620	SF	\$ 1.50	\$ 27,930
132	4.5" CL2 AB - Sidewalks	18,334	SF	\$ 3.20	\$ 58,669
133	3.5" PCC Sidewalk	18,334	SF	\$ 15	\$ 275,010
134	Curb Ramps	11	EA	\$ 22	\$ 242
135	6" CL2 AB - Driveways	2,198	SF	\$ 4.50	\$ 9,891
136	Driveways	2,198	SF	\$ 17	\$ 37,366
137	Traffic Control	1	LS	\$ 150,000	\$ 150,000
138	Stainless Steel Sheathing Wall	1	LS	\$ 35,000	\$ 35,000
Subtotal 23rd Street					\$ 3,987,281

Item	Description	Quantity	Unit	Unit Price	Amount
<u>IRRIGATION AND LANDSCAPING</u>					
139	Structural Soil (36")	1	LS	\$ 350,000	\$ 350,000
140	Gravel Layer at Planter Areas (4")	1	LS	\$ 30,000	\$ 30,000
141	Irrigation Drip System (No Design)	1	LS	\$ 300,000	\$ 300,000
142	48" Box Trees	1	LS	\$ 250,000	\$ 250,000
143	Tree Aeration (2 Per Tree)	1	LS	\$ 9,000	\$ 9,000
144	5 Gallon Shrubs	1	LS	\$ 1,500	\$ 1,500
145	1 Gallon Shrubs	1	LS	\$ 40,000	\$ 40,000
146	Organic Mulch (3")	1	LS	\$ 10,000	\$ 10,000
147	Gravel Mulch (3")	1	LS	\$ 20,000	\$ 20,000
148	Soil Preparation & Amendments	1	LS	\$ 15,000	\$ 15,000
149	Fine Grade Landscape Areas	1	LS	\$ 5,000	\$ 5,000
150	90 Calendar Day Maintenance Period	1	LS	\$ 10,000	\$ 10,000
151	Site Furnishings (Benches/Receptacles/Bike Rack)	1	LS	\$ 80,000	\$ 80,000
152	Irrigation Water Meters	2	EA	\$ 3,000	\$ 6,000
Subtotal Irrigation And Landscaping					\$ 1,126,500
<u>MISCELLANEOUS</u>					
153	Signage and Striping (Onsite)	1	LS	\$ 275,000	\$ 275,000
154	Signage and Striping (23rd Street)	1	LS	\$ 250,000	\$ 250,000
155	Traffic Signal	1	LS	\$ 450,000	\$ 450,000
156	SWPPP Allowance	10	MO	\$ 50,000	\$ 500,000
Subtotal Miscellaneous					\$ 1,475,000
SUBTOTAL PHASE 1 STREET IMPROVEMENTS PERMIT BOND AMOUNT					\$ 27,810,300
10% CONTINGENCY					\$ 2,781,030
TOTAL PHASE 1 STREET IMPROVEMENTS PERMIT BOND AMOUNT					\$ 30,591,000
<i>(to the nearest \$1,000)</i>					



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ENGINEER'S PRELIMINARY BOND ESTIMATE
SFPUC SEWER CONNECTION
POTRERO POWER STATION
SAN FRANCISCO, CALIFORNIA

June 8, 2022
Job No.: 2747-000
Revised: July 13, 2022

Item	Description	Quantity	Unit	Unit Price	Amount
1	Import Soil	800	CY	\$ 75	\$ 60,000
2	Rough Grade	800	CY	\$ 20	\$ 16,000
3	Slurry Backfill 14" Combined Sewer	150	LF	\$ 80	\$ 12,000
4	Remove and Replace Existing 14" Combined Sewer Stub	32	LF	\$ 750	\$ 24,000
5	14" Combined Sewer	145	LF	\$ 495	\$ 71,775
6	Manholes	2	EA	\$ 15,000	\$ 30,000
7	Connect to Existing Manhole	1	EA	\$ 10,000	\$ 10,000
8	12' Wide (2" AC on 8" AB Road)	2,450	SF	\$ 12	\$ 29,400
9	Asphalt Side Slopes (3" AC)	5,010	SF	\$ 6	\$ 30,060
10	18" Drainage Culvert	75	LF	\$ 300	\$ 22,500
11	Chain Link Fence and Gates	1	LS	\$ 3,000	\$ 3,000
12	Erosion Control Measures	1	LS	\$ 15,000	\$ 15,000
13	Existing 20th Street Pump Station (Install Larger Pumps)	1	LS	TBD	TBD

SUBTOTAL SFPUC SEWER CONNECTION BOND AMOUNT \$ 323,735

20% CONTINGENCY \$ 64,747

TOTAL SFPUC SEWER CONNECTION BOND AMOUNT \$ 388,000
(to the nearest \$1,000)



CIVIL ENGINEERS • SURVEYORS • PLANNERS

ENGINEER'S PRELIMINARY BOND ESTIMATE
FINAL MAP 10714
PHASE 1 MONUMENTATION
POWER STATION
SAN FRANCISCO, CALIFORNIA

May 12, 2022
2747-000

Item	Description	Quantity	Unit	Unit Price	Amount
<u>Set Survey Monuments</u>					
1	Field Crew (3 Person Crew)	24	HRS	\$ 400.00	\$ 9,600
2	Office Support (Senior Surveyor)	8	HRS	\$ 225.00	\$ 1,800
3	Materials	1	LS	\$ 1,500.00	\$ 1,500
SUBTOTAL FINAL MAP 10714 BOND AMOUNT					\$ 12,900
10% CONTINGENCY					\$ 1,290
TOTAL FINAL MAP 10714 BOND AMOUNT					\$ 14,000
(to the nearest \$1,000)					

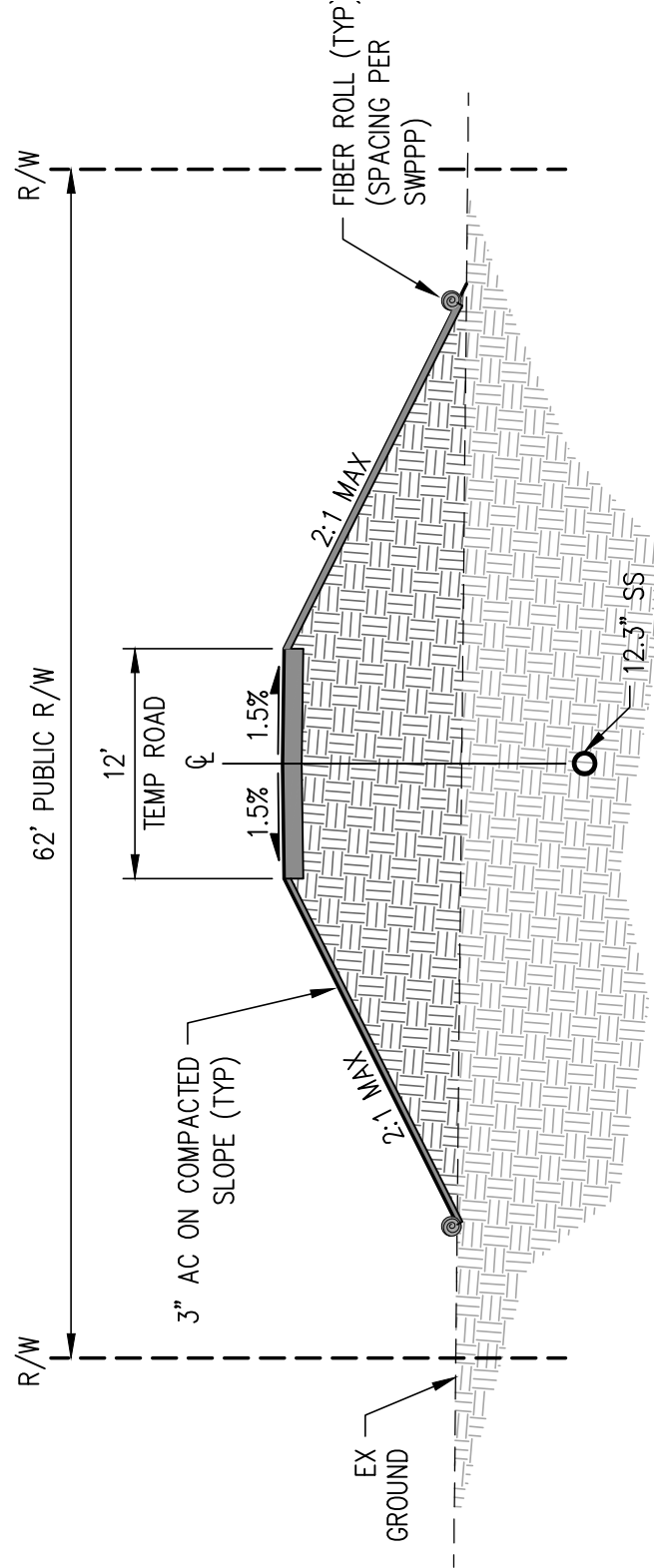


EXHIBIT C

SFPUC Sewer Connection

CONSTRUCTION NOTES:

- 1
- SEWER MANHOLE PER CGSF STD PLANS 87,181 & 87,190
- 2
- 132 LF OF 12.3" SS HDPE PIPE
- 3
- 2,450 SF TEMPORARY ACCESS ROAD AT FUTURE STREET SUBGRADE (2" AC ON 8" CLASS II AB) – H2O LOADING REQUIRED
- 4
- 5,010 SF TEMP 3" TEMP AC ON COMPACTED 2:1 SLOPE
- 5
- 1,450 SF HYDROSEDED 2:1 SLOPE AND SET WITH FIBER ROLLS AS REQUIRED PER PPS & P70 SWPPP
- 6
- RAISE GRADE TO BOTTOM OF FUTURE STREET SUBGRADE
- 7
- CONTRACTOR TO ROUTE & COLLECT TEMP ROAD RUNOFF IN CONFORMANCE WITH ACTIVE SWPPP FOR P70
- 8
- CONTRACTOR TO INSTALL 15.8" (I.D.) HDPE TEMPORARY DRAINAGE CULVERT AS REQUIRED BY FIELD CONDITIONS
- 9
- CONTRACTOR TO INSTALL 8" HIGH CHAIN LINK FENCE & GATES SYSTEM AT EACH END OF TEMPORARY ACCESS ROAD



SECTION A

SCALE: 1" = 10'

Exhibit C

SFPUC SEWER CONNECTION

POTRERO POWER STATION

CITY & COUNTY OF SAN FRANCISCO CALIFORNIA

SCALE: 1" = 20' DATE: JUNE 3, 2022

CIVIL ENGINEERS SURVEYORS PLANNERS

SAN RAMON (925) 866-0322

ROSEVILLE (916) 788-4456

WWW.CBANDG.COM

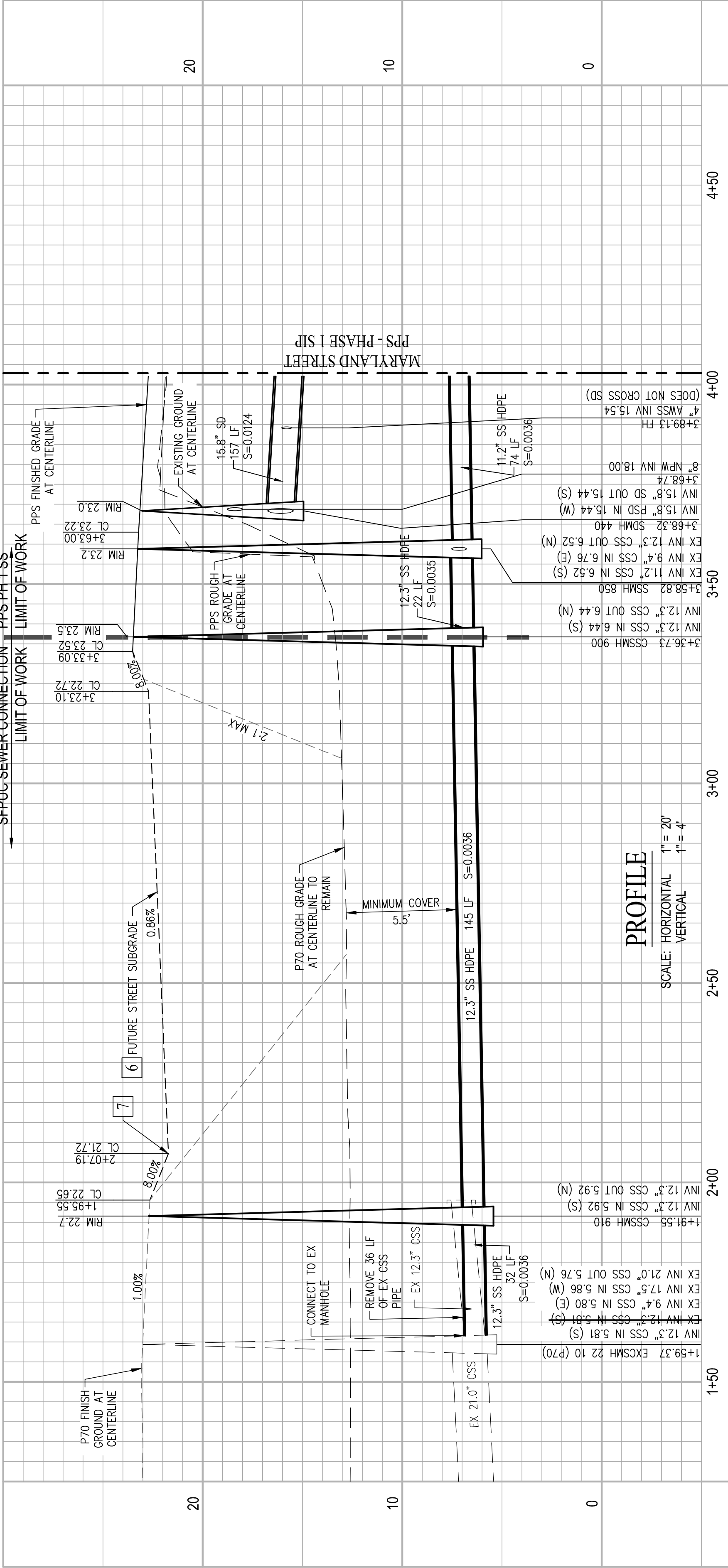
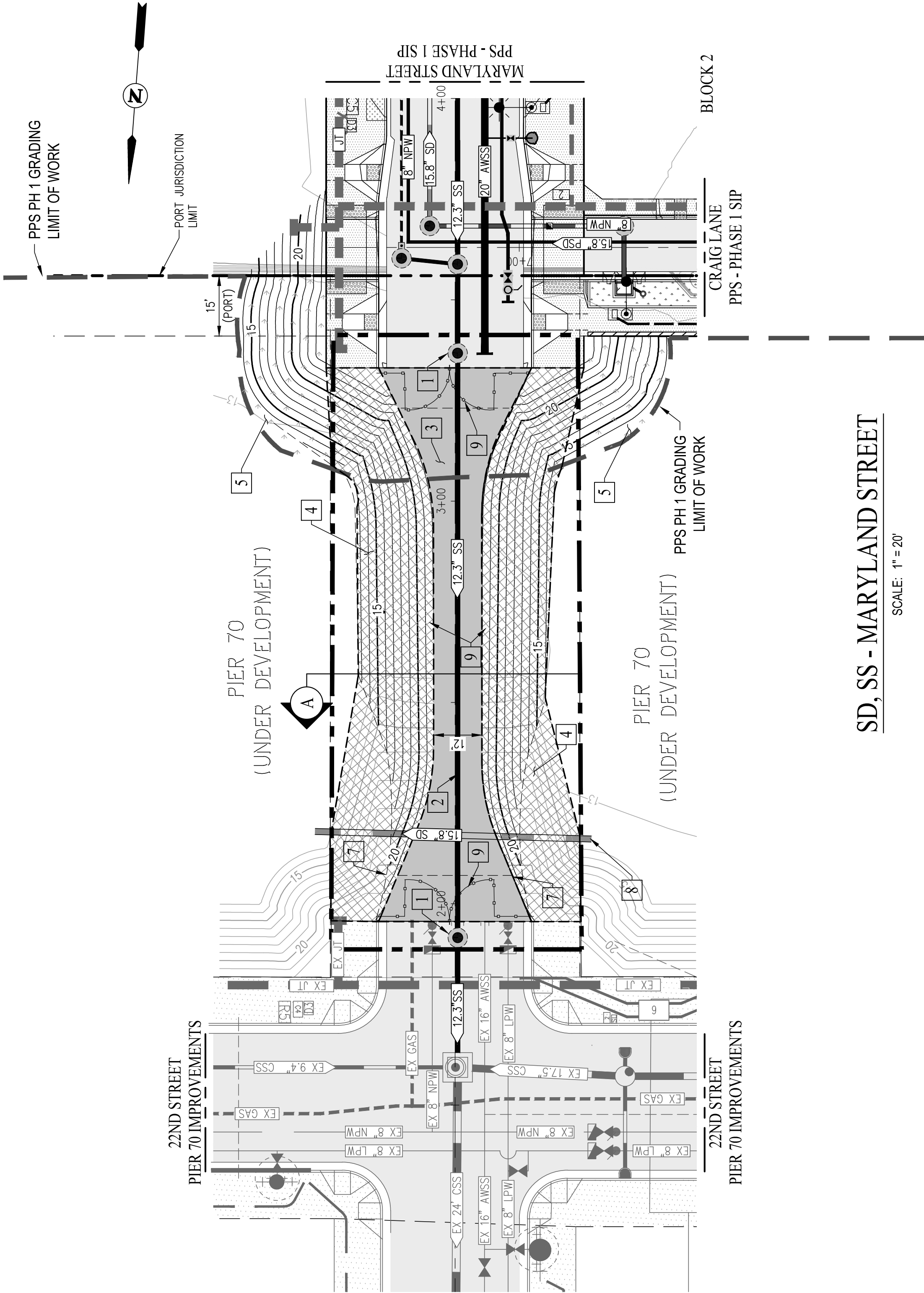
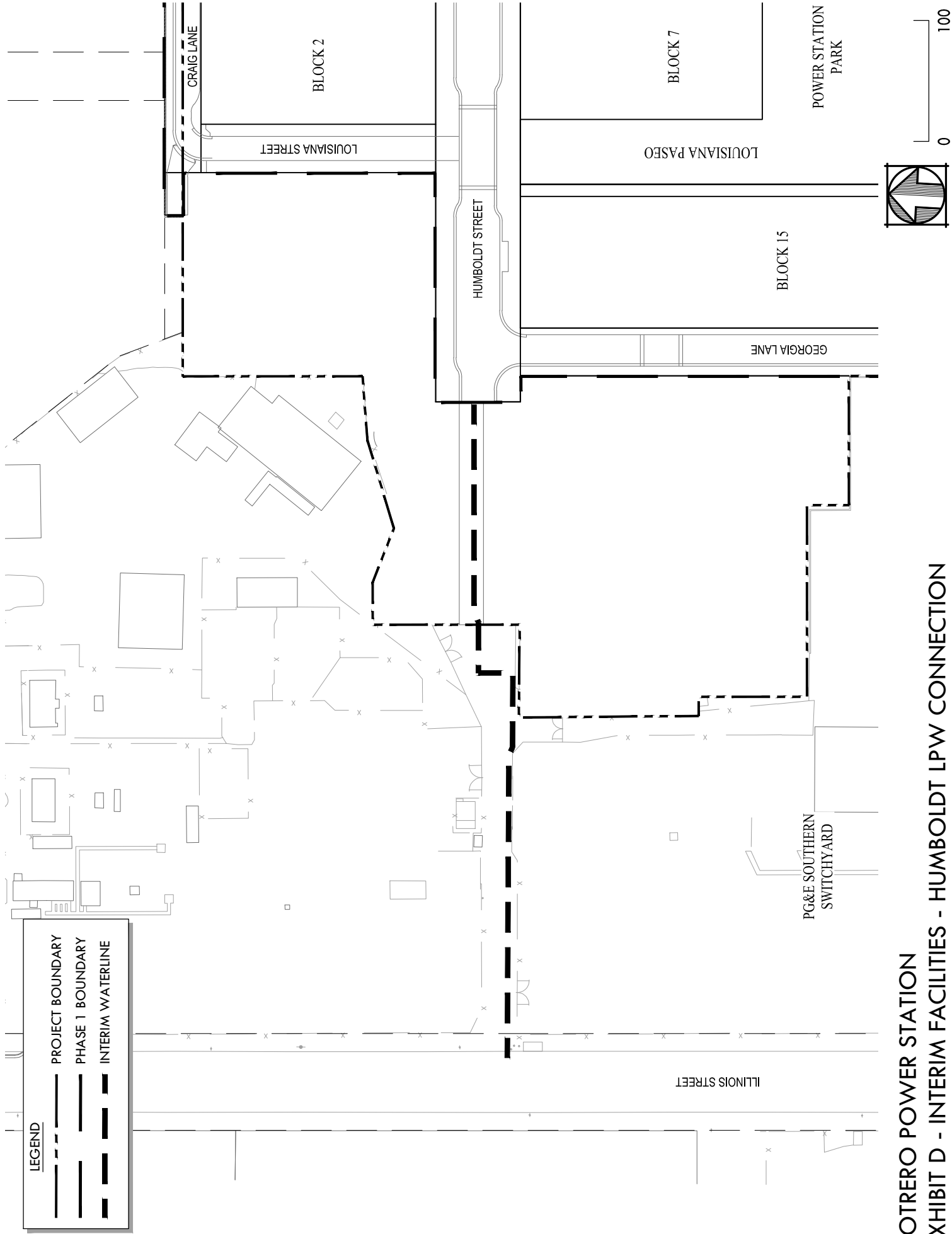


EXHIBIT D

Interim Facilities - Humboldt LPW Connection



POTRERO POWER STATION
EXHIBIT D - INTERIM FACILITIES - HUMBOLDT LPW CONNECTION

EXHIBIT E

Documents Required for Public Improvement Agreement

1. Approved Street Improvement Permit
2. Offer of improvements
3. Offer of public street dedications (Lots A, B, C, D, and F), including grant deeds
4. Public easement agreements
 - a. Stormwater Outfall Easement
 - b. Private 23rd Street Water Line Easement
 - c. Overland Flow Easement (Lots E and N (South))
 - d. Overland Flow Easement (Lots L and K (North))
 - e. Sidewalk Easement (Lots 6, 8, 12, AA, AB, AC, X, Y, and Z)
 - f. Department of Technology Easement
5. Form of Interim Operating Agreement for Humboldt LPW Connection
6. Form of Interim Operating Agreement for Other Phase 1 SFPUC Facilities
7. Performance Bond (attached as Exhibit J-1), Payment Bond (attached as Exhibit J-2), and monument bonds (attached as Exhibit J-3)
8. Maintenance matrix

EXHIBIT F

Subdivider Letter Request for Deferral and Conditions for Deferred Compliance

J. ABRAMS LAW, P.C.

538 Hayes Street
San Francisco, CA 94102

Nick Roosevelt
nroosevelt@jabramslaw.com
(504)-717-9251

July 14, 2022

Carla Short
Interim Director
San Francisco Department of Public Works
Bureau of Streets and Mapping
49 South Van Ness Avenue, Suite 1600
San Francisco, CA 94103

Re: Potrero Power Station Mixed-Use Development Project – *Subdivider Letter Request for Deferral and Conditions of Deferred Compliance*

Dear Interim Director Short:

This firm represents California Barrel Company LLC (“Project Sponsor” or “Subdivider”), sponsor of the Potrero Power Station Mixed-Use Development Project (the “Project”) and party to that certain Development Agreement between Project Sponsor and the City, approved by Board of Supervisors Ordinance No. 0062-20, File No. 200040 (the “Development Agreement”).

Project Sponsor is the applicant of that certain “Tentative Final Map 10714”, being a 35 Horizontal Lot and 13 Vertical Lot Subdivision, and authorizing up to 1,419 Residential Condominium Units, up to 110 Commercial Condominium Units, and up to 3,625 Parking Units (“Tentative Map”). The Tentative Map was approved by Public Works (“PW”) Order No. 205501, subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated October 4, 2021 (the “Conditions of Approval”).¹

Project Sponsor has since submitted that certain phased “Final Map 10714”, being a twenty-three (23) lot subdivision with lots intended for residential, commercial, open space, public right-of-way uses, private streets, and future development, including up to 772 residential condominium units and 70 commercial condominium units (“Final Map”). Pursuant to Section IV.F of the 2015 Subdivision Regulations, Subdivider’s application for the Final Map included a Deferred Materials Submittal, including a tracking spreadsheet addressing each of the Conditions of Approval.

¹ We note that the Conditions of Approval were modified pursuant to PW Order No. 206798 in a manner that does not relate to deferral of certain conditions requested herein.

Also pursuant to Section IV.F of the 2015 Subdivision Regulations, Subdivider now hereby requests continued deferral of certain Conditions of Approval (the “Requested Deferrals”). The Requested Deferrals, along with terms for each requested deferral are included in Exhibit A hereto.

We appreciate your attention to this request and are available to answer any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick W. Roosevelt", with a stylized flourish at the end.

Nicholas W. Roosevelt

ATTACHMENT

- Exhibit A – Requested Deferrals

EXHIBIT A
Requested Deferrals

Condition of Approval Item No.	Conditional of Approval	Current Status	Applicable Term(s) for Requested Deferral
SFPUC General Conditions			
1.	Prior to the earlier of Subdivider's submission of a final map or execution of any infrastructure permitting agreement, the SFPUC must approve the utility configuration of the proposed western terminus of Humboldt Street (the portion of Humboldt Street west of Georgia Lane) (the "Humboldt Terminus").	The Humboldt Terminus is part of Phase 2 and not depicted within the Phase 1 Street Improvement Permit ("SIP") or Phase 1 Final Map.	SFPUC must approve the utility configuration of the Humboldt Terminus in the earlier of the final map submission or SIP for the development phase in which the Humboldt Terminus is located.
8.	Prior to the earlier of Subdivider's submission of any Phased Final Map or execution of any subdivision improvement agreement, Subdivider and SFPUC shall execute an agreement or agreements granting the SFPUC all necessary land rights within the Phased Final Map area or as necessary to serve the phase/permit area for any facilities outside public rights-of-way that SFPUC agrees to own, at no cost to the SFPUC, including rent, licensing fees or other ongoing costs. If the necessary rights cannot be granted to the SFPUC in a manner satisfactory to the SFPUC, Subdivider will need to be responsible for maintenance and liability of the utilities, or submit a new Master Tentative Map with revised utility layouts, unless the revised layouts are deemed in substantial conformance with the approved Master Tentative Map by the City Engineer.	Satisfaction of this condition is evidenced on Final Map No. 10714, except for the Northern Connection Implementation Agreement (described in Recital M of PLA) and the Amended Humboldt Street Waterline Easement Agreement (shown on Sheet 9 of the Final Map). City review of Northern Connection Implementation Agreement and Amended Humboldt Street Waterline Easement Agreement is on-going.	Subdivider and SFPUC (and, in the case of the Northern Connection Implementation Agreement, the San Francisco Port Commission and Brookfield) shall finalize the form and execute the Northern Connection Implementation Agreement within 60 calendar days of the Board of Supervisors motion approving the Final Map. The Amended Humboldt Street Waterline Easement Agreement shall be finalized and executed prior to occupancy of first building in Phase 1 Final Map area.

16.	<p data-bbox="212 1073 1383 1738">Prior to the earlier of Subdivider's submission of an applicable Phased Final Map or issuance of the applicable subdivision improvement agreement, Subdivider shall indicate whether it intends to request SFPUC to operate public utility facilities prior to those facilities being accepted by the Board of Supervisors. The SFPUC will require that Subdivider either: (a) have a plan to connect the facilities without SFPUC's operation and maintenance (e.g., backflow preventers and/or master meters), or (b) enter into an agreement with the SFPUC (e.g., a utility license) allowing the SFPUC to use, operate and maintain any Subdivider-owned utility facilities that are expected to be accepted by the City. Any such agreement between SFPUC and Subdivider shall be consistent with Section 14.24 of the Development Agreement. In addition to any other conditions that the City deems appropriate, Subdivider shall be responsible for all costs related to operation, maintenance and liability for each utility facility subject to the license agreement until those improvements are accepted by the City. Any such license agreement shall be executed prior to the earlier of approval of the applicable check print Phased Final Map or execution of the applicable subdivision improvement agreement. The use, operation and maintenance by the City under the license shall not change, impact, or otherwise modify Subdivider's obligation to request NOC for complete and functional street segments, Subdivider's warranty of the improvements, which shall begin at the issuance of the NOC for the complete street, or the City's</p> <p data-bbox="212 653 459 1052">Subdivider has indicated intent to enter into an interim operating agreement with SFPUC. SFPUC review of draft Interim Operating Agreement proposed by Subdivider is on-going.</p> <p data-bbox="212 174 423 632">Subdivider and City shall finalize the form and execute the Interim Operating Agreement(s) within 60 calendar days of the Board of Supervisors motion approving the Final Map.</p>
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	discretion to accept the improvements. Subdivider shall not request any reduction of bonding for the utilities subject to the license prior to requesting NOC for the complete and functional street segment encompassing the utilities.			
SFPUC Wastewater Enterprise				
12.	The applicable subdivision improvement agreement under the first Phased Final Map shall require that Subdivider permit and construct the Sanitary Sewer Pump Station located within the Master Tentative Map area, or connect to the Pier 70 sewer system and 20th Street Pump Station within the first phase of horizontal improvements.	The Phase 1 Street Improvement Permit plans depict the connection to the Pier 70 sewer system and the PIA requires Subdivider to construct such connection and provide security for completion. City review of the Northern Connection Implementation Agreement described in Recital M of the PIA is on-going.	Subdivider, SFPUC, Port, and Brookfield shall finalize the form and execute the Northern Connection Implementation Agreement within 60 calendar days of the Board of Supervisors motion approving the Final Map.	
15.	Subdivider may not construct a sewer connection to Pier 70, unless the Port and SFPUC execute an MOU allowing the project's sewer flows into the 20th Street pump station prior to the earlier of the Subdivider's submission of the first Phased Final Map or issuance of an infrastructure permitting agreement. Subdivider shall also obtain an agreement with Brookfield defining roles and responsibilities for the pump station upsizing work and sewer connection work on Maryland Street between Craig Lane and 22nd Street; submit (or ensure that Brookfield has submitted) an amended Infrastructure Plan(s) (or other agreement) which obligates Subdivider and/or Brookfield to construct (or pay for) the upsizing of the 20th Street Pump	Draft Northern Connection Implementing Agreement for utility connection has been drafted by Subdivider and is being reviewed by Brookfield, Port, and SFPUC. Concurrently, the Port and SFPUC are finalizing required MOU.	The Northern Connection Implementation Agreement and MOU shall be finalized and executed within 60 calendar days of the Board of Supervisors motion approving the Final Map.	

	Station for both the project flows and full build-out and the upsizing required to achieve zero discharges in a typical year (as generally provided in modeling SFPUC Final Hydraulic Modeling Evaluation for 20th Street Pump Station dated 12/16/20), other agreements that may become necessary based on the proposed work, and, if applicable, a cost sharing agreement between Subdivider, Brookfield, and the City.		
16.	As detailed in the sewer master plan, the site has two sewer system types—combined sewer (CS) and a separated sanitary sewer/storm drain (SS/SD). Each lot’s lateral connection point informs the corresponding sewer system’s performance and the lot’s compliance with the differing obligations of the SMO in CS areas vs. MS4 areas. In boundary lots—where a parcel may adjoin the two different sewer system types—lateral connections points (where “points” means “to sewer system type”) must be constructed per the sewer system master plan. Concurrent with submission of each Phased Final Map, Subdivider shall prepare and arrange for the recording of parcel-specific declarations of restrictions to inform the required connection type (CS or SS/SD).	For Phase 1 Final Map, condition applies only to Lot 6. City has proposed deferral of this condition to issuance of Phase 1 SIP.	Issuance of Phase 1 SIP contingent upon preparation and recording of declarations of restrictions for Lot 6.

SFPUC Water Enterprise		
5.	<p>The existing water main easement in the private portion of 23rd Street shall be either replaced with a new easement or be amended/restated on SFPUC's modern form. Prior to approval of any Street Improvement Permit that includes this water line, Subdivider shall obtain approval of this new or amended easement from PG&E and the SFPUC. The easement shall be 25' wide centered on the pipe and appurtenances, unless otherwise allowed by the SFPUC. The existing water line within the PG&E property in the private portion of Humboldt Street cannot be accepted for ownership by the SFPUC. Prior to the earlier of Subdivider's submission of the Phased Final Map or infrastructure permitting agreement for any facilities that rely on this water line connection, Subdivider shall enter into an agreement with the SFPUC for the operation of this water pipe. Negotiation of this agreement will be preceded by in-depth design coordination with SFPUC staff, to determine how the connection will be made. The design coordination may involve meters, rebuilding the existing pipe, backflow prevention, changing the pipe layout shown in this Master Tentative Map, and or other considerations. The SFPUC shall determine the final design of this connection in consultation with Subdivider.</p>	<p>The 23rd Street amended waterline easement is complete.</p> <p>For the Humboldt Street waterline, SFPUC has determined an Amended Humboldt Street Waterline Easement Agreement with PG&E is necessary prior to finalizing and executing an Interim Operating Agreement.</p>
		<p>Amended Humboldt Street Waterline Easement Agreement and Interim Operating Agreement shall be finalized and executed prior to occupancy of first building in Phase 1 Final Map area.</p>

San Francisco Municipal Transportation Agency

3.	<p>Subdivider shall record a restriction or enter into an appropriate agreement to allow for the bus loading and waiting area within the private portion of 23rd Street, consistent with the Project's D4D, Transportation Demand Management program, and transportation analysis in the EIR.</p>	<p>City has determined that two distinct notices of special restrictions are necessary: (1) a notice of special restriction permitting SFMTA use of private 23rd Street for bus access and passenger loading, a draft of which has been submitted by Subdivider and is under review by the City; and (2) a notice of special restriction regarding certain passenger loading and waiting facilities and restroom facilities for SFMTA bus drivers, the substance of which can only be finalized upon refined detail of the Vertical Improvements for Block 12.</p>	<p>Subdivider and City shall finalize, execute, and record the notice of special restriction permitting SFMTA use of private 23rd Street for bus access and passenger loading within 60 calendar days of the Board of Supervisors motion approving the Final Map.</p> <p>Subdivider and City shall finalize, execute, and record the notice of special restriction regarding passenger loading and waiting facilities and restroom facilities for SFMTA bus drivers prior to DBI issuance of the first addendum of the site permit for Block 12 permitting commencement of construction of Vertical Improvements</p>
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Public Works – BUREAU OF STREET USE AND MAPPING (BSM) PERMITTING DIVISION			
2.	Subdivider shall provide easements or other form of recorded notice needed for pedestrian access in a form acceptable to the City for any public infrastructure located on private property.	City review of a City-required notice of special restriction for Private Open Space Access on portions of Lots 6, 7, 8, 11, 12, N, X, Y, Z, and AC is on-going.	Subdivider and City shall finalize and record the referenced notices for Private Open Space access within 60 calendar days of the Board of Supervisors motion approving the Final Map.
City Attorney			
4.	No later than the first applicable Phased Final Map or first subdivision improvement agreement, Subdivider shall offer fee title to the City (in the form of Exhibit S to the Development Agreement) for the portion of Lot AA to be improved with the cul-de-sac terminus of Humboldt Street (as shown on the Master Tentative Map). The grant deed shall specify that Subdivider has the power of termination (under California Civil Code sections 885.010-885.070), effective if the portion of Humboldt Lane (as shown in the Infrastructure Plan) within the PG&E Sub-Area becomes subject to the Development Agreement (by execution of the joinder attached to the Development Agreement or other instrument approved by the City) and becomes subject to an applicable Phased Final Map for the extension of Humboldt Street to Illinois. The grant deed shall specify that Subdivider may exercise the power of termination by written notice to the City and no action by the Board of Supervisors shall be required to approve such termination. Subdivider's power of termination shall not extend beyond the term of the Development Agreement (as extended by the joinder or other cause as permitted by the Development Agreement).	The Humboldt Terminus is not within the Phase I areas.	Offer of fee title shall be offered as part of the phased final map that contains the Humboldt Terminus.

EXHIBIT G

Northern Connection Implementing Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED
RETURN TO:

Space Above Reserved for Recorder's Use

NORTHERN CONNECTION IMPLEMENTATION AGREEMENT

by and among

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company,

FC PIER 70, LLC,
a Delaware limited liability company,

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

and

CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND THROUGH THE SAN
FRANCISCO PUBLIC UTILITY COMMISSION

Table of Contents

[to be provided]

EXHIBIT LIST

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
Exhibit A	PPS Property
Exhibit B	Pier 70 Property
Exhibit C	Affected Property
Exhibit D	EPS Plans
Exhibit E	Maryland Street Connection Plans
Exhibit F	SFPUC Sewer Connection Plans
Exhibit G	SFPUC Sewer Connection Interim Operating Agreement Maryland Street
Exhibit H	Connection Interim Operating Agreement
Exhibit I	Insurance Requirements for Developer Parties

NORTHERN CONNECTION IMPLEMENTATION AGREEMENT

This Northern Connection Implementation Agreement (this “Agreement”) is made as of [____], 2022 (the “Effective Date”) by and among CALIFORNIA BARREL COMPANY LLC, a Delaware limited liability company (“PPS Master Developer”), FC PIER 70, LLC, a Delaware limited liability company (“P70 Master Developer”), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “City”), operating by and through the SAN FRANCISCO PORT COMMISSION (“Port”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PUBLIC UTILITIES COMMISSION (“SFPUC”).

RECITALS

This Agreement is made with reference to the following facts:

A. PPS Master Developer and the City are parties to that certain Development Agreement dated for reference purposes only as of September 22, 2020 and recorded in the Official Records of the City and County of San Francisco (the “Official Records”) on October 2, 2020 as Document No. 2020025312 (the “PPS Development Agreement”). Pursuant to the PPS Development Agreement, PPS Master Developer is developing a multi-phased, mixed-use development project known as the Potrero Power Station Mixed-Use Development Project that is planned to include a new, publicly accessible network of improved parkland and open space and a mixed-use urban neighborhood, including up to approximately 2,600 dwelling units and approximately 1.6 million square feet of commercial (the “PPS Project”). For the purposes of this Agreement, the “PPS Property” is the approximately 21.0 acres of developed and undeveloped land located in the City that is generally bound by 22nd Street to the north, the San Francisco Bay to the east, 23rd Street to the south and Illinois Street to the west, as more particularly described and depicted on Exhibit A attached hereto. PPS Master Developer owns the PPS Property.

B. Port owns the Pier 70 Property (as defined below), which is immediately to the north of the PPS Property and on which a future development project (the “Pier 70 Project”) is expected to be constructed in accordance with that certain Development Agreement dated as of May 2, 2018 and recorded in the Official Records on May 25, 2018 as Document No. 2018-K619432-00, as amended by that certain Memorandum of Technical Corrections dated as of January 15, 2020 and recorded in the Official Records on January 16, 2020 as Document No. 2020-K891133 (as amended, the “Pier 70 DA”), by and between the City and P70 Master Developer, and that certain Disposition and Development Agreement dated as of May 2, 2018 and recorded in the Official Records on May 25, 2018 as Document No. 2018-K619435-00, as amended by that certain First Memorandum of Technical Corrections recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531, and as further amended by that certain Second Memorandum of Technical Corrections dated as of January 15, 2020 and recorded in the Official Records on January 16, 2020 as Document No. 2020-K891134 (as amended, the “P70 DDA”), by and between Port and P70 Master Developer. For the purposes of this Agreement, the “Pier 70 Property” is the approximately 28 acres of developed and undeveloped land located in the City that is generally bound by [____], defined as the “28-Acre Site” in the Pier 70 DDA, as more particularly described and depicted on Exhibit B attached hereto. P70 Master Developer leases the Pier 70 Property under a Master Lease by and between

Port and P70 Master Developer dated as of May 2, 2018, a memorandum of which was recorded in the Official Records on May 25, 2018 as Document No. 2018-K619436-00 (the “Memorandum of Pier 70 Master Lease”), as amended by that certain First Memorandum of Technical Corrections recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531, and as further amended by that certain Second Memorandum of Technical Corrections dated as of January 15, 2020 and recorded in the Official Records on January 16, 2020 as Document No. 2020-K891134 (as amended, the “Pier 70 Master Lease”).

C. SFPUC owns and operates a pump station (“20th Street Pump Station”), located near San Francisco Bay approximately 500 feet east of Building 108 in the Pier 70 Property, which handles combined sewer flows from an approximately 52-acre sewershed including the Shipyard, Illinois Street Parcels, and Historic Core, and Hoe Down Yard, as further defined in the Pier 70 SUD Project Grading and Combined Sewer System Master Plan. SFPUC determined that the 20th Street Pump Station could remain in place until the completion of the Pier 70 Project’s Phase 3. The Pier 70 DDA (through the Pier 70 Infrastructure Plan) requires P70 Master Developer to design and construct certain infrastructure improvements referred to in the Pier 70 DDA as “Horizontal Improvements”, which include relocation, replacement, and upsizing (to accommodate proposed flows from the Pier 70 Project) of (i) the existing combined sewer pump station, force main, collection and storage pipelines, and overflow control and outfall structures (the “Relocated 20th Street Pump Station”), to be relocated up gradient and 500’ westerly to the Port’s Shipyard, to accommodate Pier 70 Project’s land use plan and be in a location more resilient to sea level rise; (ii) new combined sewer facilities connecting the Pier 70 Project with the Relocated 20th Street Pump Station. These obligations are described in the Pier 70 Infrastructure Plan, as attached to the Pier 70 DDA.

D. After the obligation for relocating and replacing the Relocated 20th Street Pump Station was established through the Pier 70 DA, SFPUC requested the Pier 70 Project make additional accommodations in an effort to further reduce combined sewer discharges from the sewer shed to San Francisco Bay. These accommodations included increasing the force main size and pumping capacity of the 20th Street Pump Station. The Pier 70 project was also asked to install sewer pipes connecting the 20th Street Pump Station to a manhole located at the intersection of 22nd Street and Maryland Street (collectively, the “Baseline Pump Station Improvements”). Except as otherwise agreed to by the Port’s Executive Director, neither the Pier 70 Project nor the Port will have any obligation to fund any increase in cost for Baseline Pump Station Improvements above the cost of the Pier 70 Project’s obligation under the Pier 70 DA to construct the Relocated 20th Street Pump Station.

E. The PPS DA (through the PPS Infrastructure Plan (defined in Section 1 below)) requires PPS Master Developer to construct certain infrastructure improvements, including a separated sewer pump station located near Delaware Street to address sewer flows arising from the PPS Project. Under section 3.17 of the PPS DA, PPS Master Developer is responsible for their fair share of the cost of the LPS (defined in Recital _ below), where the fair share also takes into account cost savings to the PPS Master Developer.

F. On [XXXX], the City conditionally approved a Master Tentative Map for the PPS Project. The conditions approval to that Master Tentative Map require PPS Master Developer to permit and construct the Sanitary Sewer Pump Station located within the Master Tentative Map

area, or connect to the Pier 70 sewer system and 20th Street Pump Station within the first phase of horizontal improvements. In addition, PPS Master Developer may not construct a sewer connection to Pier 70, unless the Port and SFPUC have executed an MOU allowing the project's sewer flows into the 20th Street pump station. PPS Master Developer is also obligated to obtain an agreement with Brookfield defining roles and responsibilities for the pump station upsizing work and sewer connection work on Maryland Street between Craig Lane and 22nd Street; submit (or ensure that Brookfield has submitted) an amended Infrastructure Plan(s) (or other agreement) which obligates PPS Master Developer and/or Brookfield to construct (or pay for) the upsizing of the 20th Street Pump Station for both the project flows and full build-out and the upsizing required to achieve zero discharges in a typical year (as generally provided in modeling SFPUC Final Hydraulic Modeling Evaluation for 20th Street Pump Station dated 12/16/20), other agreements that may become necessary based on the proposed work, and, if applicable, a cost sharing agreement between PPS Master Developer, Brookfield, and the City.

G. PPS Master Developer has elected to pursue an infrastructure design that would connect to the combined sewer system at Pier 70 (the “Northern Connection”).

H. To accommodate the Northern Connection, new improvements would need to be located in the portion of Maryland Street on the Pier 70 Property extending from the boundary of the PPS Property and the Pier 70 Property at the intersection of Maryland Street and Craig Lane to the intersection of Maryland Street and 22nd Street, which is a portion of Lot Z as shown on Final Transfer Map No. 9597, recorded on February 7, 2019 in Book HH of Survey Maps, at pages 89-98, inclusive, Official Records as more particularly described and depicted on Exhibit C attached hereto (the “Affected Property”).

I. SFPUC has determined that, if the Northern Connection is constructed, the 20th Street Pump Station must be replaced with a larger facility compared to the Relocated 20th Street Pump Station and replacement contemplated in the Baseline Pump Station Improvements (the larger facility is referred to in this Agreement as the “LPS”) in order to accommodate the sewer flows from both the Pier 70 Project and the PPS Project and minimize system overflow discharges.

J. The LPS is planned to be a 4 mgd pump station to accommodate existing and proposed flows from the Pier 70 sewershed to meet the City’s goal of zero combined sewer discharges to the Bay from the Pier 70 sewershed in a typical year, which is a benefit to the bayshore environment at Pier 70. Using a single pump station to accommodate both PPS sanitary sewer flows and Pier 70 combined sewer flows decreases the resources needed to provide service to both PPS and Pier 70. Through the Cost-Sharing Agreement (defined in Section __), the PPS Master Developer has agreed to pay for the overall cost of increasing the capacity of the 20th Street Pump Station rather than the smaller increase based solely on PPS’s estimated sanitary sewer flows. PPS Master Developer’s is responsible for payment of P70 Master Developer’s all costs of upsizing the force main to accommodate the LPS flows.

K. It is contemplated that PPS Master Developer and P70 Master Developer will execute that certain Cost Sharing Agreement for 20th Street Pump Station Improvements and Associated Infrastructure (the “Cost-Sharing Agreement”). Pursuant to the Cost-Sharing Agreement, the Northern Connection will be constructed via one of two methods. Under the first method (the “Maryland Street Connection”), P70 Master Developer would contemporaneously

design and construct (i) all surface and subsurface utility improvements in the Pier 70 Property constituting Maryland Street (including sidewalks, street lights, curbs, sewer improvements serving the Pier 70 Project and other street improvements, but excluding the Maryland Street Sewer Connection (as defined below)) as required by the Subdivision Regulations between Craig Lane and 22nd Street (the “P70 Maryland Street Improvements”) and (ii) a sanitary sewer pipe completing the Northern Connection running underneath Maryland Street from the boundary of the PPS Property and the Pier 70 Property at the intersection of Maryland Street and Craig Lane to the intersection of Maryland Street and 22nd Street (the “Maryland Street Sewer Connection”). Under the second method (the “SFPUC Sewer Connection”), P70 Master Developer would design and construct the Maryland Street Sewer Connection and limited surface improvements prior to and separate from the design and construction of the remaining P70 Maryland Street Improvements.

L. Under certain circumstances described herein, SFPUC would have the right to call on security provided by PPS Master Developer pursuant to the PPS Phase 1 PIA and construct SFPUC Sewer Connection.

M. SFPUC has determined that PPS Master Developer, through the Northern Connection, may use and rely upon the Existing 20th Street Pump Station to accept all sewer flows from the PPS Project designated to reach the Existing 20th Street Pump Station under the PPS Infrastructure Plan, based on flow assumptions from the PPS Sanitary Sewer Master Utility Plan.

N. As contemplated under the Pier 70 DDA, P70 Master Developer has an option to enter into a Vertical Disposition and Development Agreement (each, a “Pier 70 VDDA”) and thereafter acquire a fee interest (if the proposed use is for-sale residential condominiums) or a 99-year leasehold interest (if the proposed use is commercial or rental residential) (each, a “Pier 70 Parcel Lease”) for each of the Pier 70 Option Parcels (as defined in the Pier 70 DDA), which option may be exercised through one or more affiliates of P70 Master Developer. If P70 Master Developer elects not to exercise its option for a Pier 70 Option Parcel, Port may sell or convey a 99-year leasehold interest in such Pier 70 Option Parcel to a third party, all in accordance with the terms of the Pier 70 DDA. Any Person acquiring a Pier 70 Option Parcel (either in fee or by a Pier 70 Parcel Lease for such Pier 70 Option Parcel) in accordance with the Pier 70 DDA and a Pier 70 VDDA is referred to herein, for the period it is party to such agreements, as a “Pier 70 Vertical Developer”.

O. By this Agreement, the Parties wish to more particularly set forth the terms and conditions providing for: (1) the design of the LPS, Maryland Street Connection, and SFPUC Sewer Connection; (2) a one-time payment by PPS Master Developer to the Port for the Port allowing sewer flows from outside the Pier 70 boundary per Port Resolution Nos. 18-41 and 19-07, which may be superseded by future resolutions ; (3) the allocation of rights and obligations related to ownership, maintenance, and operation of the SFPUC Sewer Connection and Maryland Street Connection; and (4) SFPUC’s right to construct of the SFPUC Sewer Connection.

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, PPS Master Developer, Port, P70 Master Developer, and SFPUC hereby agree that the Affected Property shall be held, improved, developed, sold,

conveyed, hypothecated, encumbered, leased, rented, used, operated and occupied subject to the limitations, restrictions, reservations, agreements, rights, easements, conditions and covenants set forth in this Agreement (collectively, the “Restrictions”), all and each of which are intended to be in furtherance of the protection, maintenance, repair, replacement, improvement and operation of the Northern Connection and for the purpose of enhancing and preserving the value, desirability and attractiveness of the PPS Project and the Pier 70 Project. In furtherance of the foregoing, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS.

“20th Street Pump Station” is defined in Recital C.

“Additional Instruments” is defined in Section 2.5.

“Affected Property” is defined in Recital D.

“Affiliate” when used with respect to a Person means any other Person that (a) directly or indirectly controls the specified Person or (b) is controlled by or is under direct or indirect common control with the specified Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities, partnership, or limited liability company interests, by contract or otherwise.

“Agents” means, as to a Person, the officers, directors, commissioners, employees, agents, attorneys, and contractors of such Person (including subcontractors and others performing construction or maintenance and repair obligations on behalf of such Person in accordance with this Agreement), and their respective heirs, legal representatives, successors, and assigns.

“Agreement” is defined in the Preamble and includes any amendment hereto in accordance herewith.

“Association” means a residential, commercial, or other management association (which can be a master association or a sub-association) governing the PPS Project or the Pier 70 Project and with the authority to levy fees or otherwise generate sufficient revenue to perform its obligations hereunder (including the Maintenance Obligations).

“Attorneys’ Fees and Costs” means reasonable attorneys’ fees, costs, expenses and disbursements, including expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. If the P70 Master Developer or PPS Master Developer utilizes services of in-house counsel, then, for purposes of this Agreement, the reasonable fees of such in-house counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject

matter of the law for which the in-house counsel's services were rendered who practice in the City in full-service law firms.

"Baseline Pump Station Improvements" is defined in Recital C.

"Board of Supervisors" means the Board of Supervisors of the City and County of San Francisco.

"Business Day" means a day other than a Saturday, Sunday, or any legal holiday in the State of California.

"City" means, as the context requires, (i) the City, as defined in the Preamble, or (ii) the territorial jurisdiction of the foregoing.

"City Acceptance" shall mean, unless otherwise expressly specified herein, that the City has approved and accepted an offer of improvements for public dedication, dedicated those improvements to public use, designated those improvements for street and roadway purposes, and accepted the improvements for City maintenance, and liability through a duly adopted Board of Supervisors ordinance, and/or other appropriate action.

"Commence Construction" or "Commencement of Construction" means the start of substantial physical construction as part of a sustained and continuous construction plan.

"Cost-Sharing Agreement" is defined in Recital F, as the same may be amended from time to time.

"Craig Lane" is defined in the Potrero Power Station Design for Development dated February 26, 2020 (Exhibit D to the PPS Development Agreement).

"Effective Date" is defined in the Preamble.

"Emergency" means a condition requiring immediate repair, replacement or other action: (a) to prevent material damage to the Affected Property (including any Infrastructure located thereon); (b) to prevent damage to property located immediately adjacent to the Affected Property; (c) for the reasonable safety of any Person using the Affected Property; or (d) to comply with Laws applicable to the Affected Property.

"SFPUC Sewer Connection" is defined in Recital F.

"Force Majeure" is defined in Section 8.17.

"Infrastructure" means, as the case may be, any of the SFPUC Sewer Connection, Maryland Street Connection, or LPS, or any portion thereof.

"Interest Rate" means an annual interest rate equal to the lesser of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar Law.

“Law” or “Laws” means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Affected Property, the Infrastructure or other applicable matter, including all consents or approvals from any governmental agency that has jurisdiction (including any authorization, approval or permit required by any applicable Regulatory Agency) that may affect or be applicable to the Affected Property, including any subsurface area, the use thereof and of the improvements thereon including any Infrastructure. For the avoidance of doubt, during the term of the PPS DA and the Pier 70 DA, respectively, local Laws will not include those local Laws that are not applicable to the PPS Project in accordance with the PPS DA or the Pier 70 Project in accordance with the Pier 70 DA, respectively.

“LPS” is defined in Recital E.

“Maintenance Obligations” is defined in Section 3.4.2.

“Maintenance Standards” shall mean that the Maryland Street Sewer Connection is in good and serviceable condition and repair, suitable to convey all sewage flows from the PPS Project to the sewer system located on the Pier 70 Property, and at no less than the standards and quality of a publicly accepted sewer pipe and appurtenant facilities located in and maintained by the City and as required by applicable Law. The Maintenance Standards include keeping the Affected Property and the Maryland Street Sewer Connection free from any obstructions that would materially limit its ability to convey all sewage flows from the PPS Project to the sewer system located on the Pier 70 Property.

“Maryland Street” shall mean the street named Maryland Street (including the sidewalks, roadway, below-grade utilities including the Maryland Street Sewer Connection) in the Pier 70 Infrastructure Plan.

“Maryland Street Sewer Connection” is defined in Recital F.

“Maryland Street Sewer Connection License” is defined in Section 2.2.

“Maryland Street Connection” is defined in Recital F.

“Maryland Street Connection Adequate Security” is defined in Section 3.3.1.

“Northern Connection” is defined in Recital D.

“Notice of Completion” means a written order, decision, or letter from the Public Works Director setting forth his or her determination that some or all specified Infrastructure has been completed.

“Official Records” is defined in Recital A.

“P70 Maryland Street Improvements” is defined in Recital F.

“P70 Master Developer” is defined in the Preamble or means its successors or permitted assigns.

“P70 Master Developer Maintenance Obligations” is defined in Section 3.4.2.

“Party” and “Parties” are defined in the Preamble.

“Permittees” means, as to a Party, its patrons, guests, customers, invitees, visitors, licensees, vendors, suppliers, lessees, tenants and concessionaires and other Persons associated with such Party.

“Person” means any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States or a federal or political subdivision thereof, or a state or a political subdivision thereof.

“Pier 70 DA” is defined in Recital B, as the same may be amended from time to time.

“Pier 70 DDA” is defined in Recital B, as the same may be amended from time to time.

“Pier 70 Infrastructure Plan” means the Pier 70 Infrastructure Plan dated as of September 19, 2017 and attached as Exhibit B8 to the Pier 70 DDA.

“Pier 70 Infrastructure Plan Amendment” is defined in Recital J.

“Pier 70 Master Lease” is defined in Recital B, as the same may be amended from time to time.

“Pier 70 Parcel Lease” is defined in Recital K, as the same may be amended from time to time.

“Pier 70 PIA” means any subdivision improvement agreement between the City and P70 Master Developer for the completion of required public improvements consistent with and as required under the Subdivision Map Act and Subdivision Code.

“Pier 70 Project” is defined in Recital B.

“Pier 70 Property” is defined in Recital B.

“Pier 70 VDDA” is defined in Recital K, as the same may be amended from time to time.

“Pier 70 Vertical Developer” is defined in Recital K or means its successors or permitted assigns.

“Port” is defined in the Preamble or means its successors or permitted assigns.

“PPS DA” is defined in Recital A, as the same may be amended from time to time.

“PPS Infrastructure Plan” means the Potrero Power Station Infrastructure Plan, dated as of January 8, 2020 and attached as Exhibit G to the PPS DA, as the same may be amended from time to time.

“PPS Master Developer” is defined in the Preamble or means its successors or permitted assigns.

“PPS Master Developer MSC Maintenance License” is defined in Section 2.3.

“PPS Phase 1” means the first phase of PPS Project development, as approved by the City on October 7, 2020 under Planning Department Case No. 2017-011878PHA and as may be amended from time to time.

“PPS Phase 1 PIA” means that certain Potrero Power Station Mixed-Use Development Project Development Phase 1 Public Improvement Agreement, recorded in the Official Records on [] as Document No. [], as the same may be amended from time to time.

“PPS Project” is defined in Recital A.

“PPS Property” is defined in Recital A.

“Prime Rate” means the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation’s thirty (30) largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

“Public Works” means the San Francisco Department of Public Works.

“Public Works Director” means the Director of Public Works (or his or her designee) appointed as of the date of determination.

“Regulatory Agency” means any governmental agency that has jurisdiction over the Affected Property (or any applicable portion thereof or other applicable matter), including the City, the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency, the Army Corps of Engineers, and the California State Lands Commission.

“Relocated 20th Street Pump Station” is defined in Recital C.

“Requesting Party” is defined in Section 8.11.

“Responding Party” is defined in Section 8.11.

“Responsible Party” is defined in Section 3.5.

“Restrictions” is defined in the Recitals.

“SFPUC” is defined in the Preamble or means its successors or permitted assigns.

“SFPUC Maintenance Obligations” is defined in Section 3.4.1.

“SFPUC Sewer Connection” is defined in Recital F.

“Subdivision Code” means the San Francisco Subdivision Code and Subdivision Regulations.

“Subdivision Map Act” means the California Subdivision Map Act, California Government Code §§ 66410 *et seq.*

“Subdivision Regulations” means subdivision regulations applicable to the Pier 70 Property adopted by Public Works from time to time in accordance with this Agreement, including exceptions granted by the Public Works Director in accordance therewith.

“Notice of Completion” means, with respect to specified Infrastructure, (i) receipt of a Notice of Completion for the specified Infrastructure in accordance with the Subdivision Code and any applicable public improvement agreement or similar regulatory agreement, and may include reasonable documentary evidence of the payment in full of all costs and expenses in connection with the construction of such Infrastructure, including paid invoices and lien waivers.

“Temporary Construction License” is defined in Section 2.4.

“Term” is defined in Section 8.1.

“Transfer” (and any reasonable variation thereof) means to assign, transfer or sell any interest in this Agreement or portion of the Affected Property, whichever is applicable, either voluntarily or by operation of Law.

2. OWNERSHIP; LICENSES

2.1 Ownership of SFPUC Sewer Connection or Maryland Street Connection. P70 Master Developer shall own all improvements associated with the SFPUC Sewer Connection or Maryland Street Connection, respectively, until City Acceptance. .

2.2 Maryland Street Sewer Connection License. P70 Master Developer hereby grants to PPS Master Developer, during the term of the Pier 70 Master Lease, for its own benefit and its respective Agents and Permittees (including all current and future owners, tenants and occupants of any portion of the PPS Property) a non-exclusive license (the “Maryland Street Sewer Connection License”) to convey all sewage flows from the PPS Project through the Maryland Street Sewer Connection to the sewer system located on the Pier 70 Property and otherwise to provide sewer service to the PPS Project as described in the PPS Infrastructure Plan and this Agreement, regardless of whether the PPS Project has been partially or wholly completed. The term of the Maryland Street Sewer Connection License shall commence upon issuance of Notice of Completion for the Maryland Street Sewer Connection (either pursuant to the Maryland Street Connection or SFPUC Sewer Connection) and shall expire upon the earlier of (i) City Acceptance of those improvements or (ii) expiration or earlier termination of the Pier 70 Master Lease. Without limiting the foregoing, promptly following the expiration of the Maryland Street Sewer Connection License, P70 Master Developer and PPS Master Developer shall execute and record in the Official Records a memorandum of termination of the Maryland Street Sewer Connection License.

2.3 PPS Master Developer MSC Maintenance Property Rights. Pursuant to Section 6.1 of this Agreement, during the continuance of an Event of Default with respect to the P70 Master Developer Maintenance Obligations, PPS Master Developer may self-perform the P70 Master Developer Maintenance Obligations under certain circumstances.

2.3.1 MSC Maintenance License from P70 Master Developer During Term of P70 Master Lease. P70 Master Developer hereby grants to PPS Master Developer, during the term of the Pier

70 Master Lease, for its own benefit and its respective Agents and Permittees a non-exclusive license (the “PPS Master Developer MSC Maintenance License”) on, under, over, and across the entire Affected Property for the purposes of (i) reconstructing, operating, maintaining, repairing, and inspecting the Maryland Street Connection or SFPUC Sewer Connection (as applicable), (ii) placing temporary sewer connection facilities, and equipment and improvements ancillary thereto, above ground as needed in connection with any Emergency or repair of the Maryland Street Connection, and (iii) all other uses reasonably necessary to perform the P70 Master Developer Maintenance Obligations, in each case together with the right of ingress to and egress from the Affected Property over the Port-owned portion of Craig Lane. The term of the PPS Master Developer MSC Maintenance License shall commence upon an Event of Default with respect to the P70 Master Developer Maintenance Obligations and shall automatically expire and terminate upon City Acceptance of the Maryland Street Connection or SFPUC Sewer Connection, as applicable. Without limiting the foregoing, promptly following the expiration of the PPS Master Developer MSC Maintenance License, P70 Master Developer and PPS Master Developer shall execute and record in the Official Records a memorandum of termination of the PPS Master Developer Maintenance License.

2.3.2 Revocable MSC Maintenance License from Port. [TBD]

2.3.3 Temporary Construction Rights. Pursuant to the Cost-Sharing Agreement, PPS Master Developer may self-perform construction of the SFPUC Sewer Connection or Maryland Street Connection under certain circumstances.

2.3.4 Temporary Construction License from P70 Master Developer During Term of P70 Master Lease In furtherance of the foregoing, during the term of the P70 Master Lease, P70 Master Developer hereby grants to PPS Master Developer for its own benefit and its respective Agents and Permittees a non-exclusive license to enter on, over, and across the entire Affected Property and such adjacent areas of the Pier 70 Property as reasonably necessary for staging of construction equipment and materials for the purpose of constructing the SFPUC Sewer Connection or Maryland Street Connection, including conducting all activities necessary for the completion thereof, together with the right of ingress to and egress from the Affected Property over the Port-owned portion of Craig Lane) (“Temporary Construction License”). In connection with the Temporary Construction License, PPS Master Developer shall have the right to fence off or otherwise secure portions of the Affected Property to prevent third parties from accessing the Affected Property in order to ensure the safety and security thereof. The term of the Temporary Construction License shall commence upon PPS Master Developer’s delivery of notice to P70 Master Developer of its election to self-perform construction of the SFPUC Sewer Connection or Maryland Street Connection and shall automatically expire and terminate upon City Acceptance of those improvements. Without limiting the foregoing, promptly following the expiration of the Temporary Construction License, P70 Master Developer and PPS Master Developer shall execute and record in the Official Records a memorandum of termination of the Temporary Construction License.

2.3.5 Revocable Temporary Construction License from Port. [TBD]

2.4 Additional Instruments. Prior to Notice of Completion of the Infrastructure, PPS Master Developer, Port, SFPUC, and P70 Master Developer shall cooperate in good faith to

negotiate, enter into, approve and create or join in the creation of any of the following reasonably requested by any of them (collectively, the “Additional Instruments”): any dedication; conveyance; easement; lease; license or right of access or use with respect to all or a portion of the Affected Property in favor of any public utility, Regulatory Agency or other third party for purposes of implementing this Agreement; provided that no such Additional Instrument shall materially and adversely interfere with the use and operation of the Maryland Street Sewer Connection or the Affected Property (including any other improvements located thereon) as contemplated herein. Upon Notice of Completion of the SFPUC Sewer Connection or Maryland Street Connection, P70 Master Developer shall perform any further acts and to execute, acknowledge and deliver any documents that may be reasonably necessary to obtain City Acceptance.

2.5 No Public Dedications. Nothing contained in this Agreement shall be deemed a dedication of any portion of the Affected Property to the general public or for any public use or purpose prior to Acceptance of the Improvements by the Board of Supervisors.

3. DESIGN, CONSTRUCTION AND MAINTENANCE

3.1 Threshold Approvals and Actions. [TBD]

3.1.1 Change to Pier 70 DDA. Prior to amending the P70 Combined Sewer Master Utility Plan as described in Sec. 3.1.2 below, P70 Master Developer and Port shall use commercially reasonable efforts negotiate amendment(s) to the Pier 70 DDA [and the Pier 70 Acquisition Agreement] (the “Pier 70 Amendment”), effectuating (i) an amendment to the Pier 70 DDA’s definition of the term “Horizontal Development Cost,” (ii) an agreement by P70 Master Developer not to request an amendment to the Appraisal Instructions for any Option Parcel to seek a discount in the appraised value of such Option Parcel related to the SFPUC Sewer Connection or Maryland Street Connection being built ahead of vertical improvements on such Option Parcel, and [(iii) an amendment to the definition of “Acquisition Price” and source of payment for the Relocated 20th Street Pump Station, as modified by the Baseline Pump Station Improvements, including the LPS,] to facilitate implementation of this Agreement and the Cost-Sharing Agreement.

3.1.2 P70 Combined Sewer Master Utility Plan Amendment. Prior to P70 Master Developer or PPS Master Developer Commences Construction on the Maryland Street Connection or the SFPUC Sewer Connection, P70 Master Developer, Port, and SFPUC shall use commercially reasonable efforts to negotiate an amendment to the Pier 70 Combined Sewer Master Utility Plan setting forth the capacity of the LPS, the Maryland Street Connection and the SFPUC Sewer Connection, and the schedule of the Maryland Street Connection and the SFPUC Sewer Connection (the “Pier 70 Combined Sewer MUP Amendment”).

3.1.3 20th Street Pump Station MOU Amendment. Prior to or concurrent with the Pump Station Fee (defined below) coming due, Port and SFPUC shall use commercially reasonable efforts to amend the 1990 MOU as necessary to allow flows from PPS at the 20th Street Pump Station.

3.1.4 Payment of Pump Station Fee. PPS Master Developer shall pay the Pump Station Fee to the Port prior to obtaining the earlier of (i) NOC on the Maryland Street Connection or (ii) temporary certificate of occupancy (“TCO”) for any improvement that relies on the Northern Connection to convey sewage outside of PPS. [*Methodology or amount forthcoming*]

3.2 Design Approval[TBD]

3.3.1 Maryland Street Connection. If the Northern Connection is to be constructed via the Maryland Street Connection, P70 Master Developer shall design the Maryland Street Connection in general conformance with the P70 Infrastructure Plan and applicable Pier 70 master plans, and the street improvement permit issued by the City for the Maryland Street Connection and other infrastructure permits issued by the City for the Maryland Street Connection.

3.3.2 SFPUC Sewer Connection. If the Northern Connection is to be constructed via the SFPUC Sewer Connection, P70 Master Developer or PPS Master Developer, shall design the SFPUC Sewer Connection in conformance with the plans and specifications associated with the street improvement permit approved by the City for PPS Phase 1 and attached to the PPS Phase 1 PIA.

3.3.3 Enlarged Pump Station Capacity. P70 Master Developer shall size the LPS capacity in accordance with the hydraulic memo attached hereto as Exhibit D.

3.4 Intentionally omitted.

3.5 Security.

3.5.1 Maryland Street Connection. P70 Master Developer shall not Commence Construction of the Maryland Street Connection until the City and P70 Master Developer have executed and delivered a Pier 70 PIA or other agreement requiring security in favor of the City adequate to secure the construction of the Maryland Street Connection (the “Maryland Street Connection Adequate Security”) and such Maryland Street Connection Adequate Security has been furnished and delivered to the Public Works Director.

3.5.2 SFPUC Sewer Connection. Pursuant to the PPS Phase 1 PIA, PPS Master Developer shall furnish and deliver to the Public Works Director bonds, in favor of the City, and approved by the City Attorney, from an issuer approved by the Public Works Director, securing the completion of the SFPUC Sewer Connection (the “SFPUC Sewer Connection Adequate Security”). The Parties agree and acknowledge that the amounts for the SFPUC Sewer Connection Adequate Security will be as set forth in the PPA Phase 1 PIA. The City shall release the SFPUC Sewer Connection Adequate Security pursuant to the PPS Phase 1 PIA.

3.5.1 City shall, at the written request of PPS Master Developer to the Public Works Director, release the entirety of the SFPUC Sewer Connection Adequate Security promptly upon the earlier to occur of (x) Substantial Completion of SFPUC Sewer Connection, (y) P70 Master Developer entering into a Public Improvement Agreement securing the Substantial Completion of the Maryland Street Connection, or (z) Substantial Completion of the Maryland Street Connection.

3.6 Maintenance.

3.6.1 Intentionally omitted.

3.7 P70 Master Developer's Maintenance Obligations. If P70 Master Developer constructs either the SFPUC Sewer Connection or the Maryland Street Connection, continuing until City Acceptance of the same, P70 Master Developer shall be solely responsible and liable for the maintenance, repair, and replacement of said Improvements, and shall perform, or cause to be performed, at P70 Master Developer's sole cost, all maintenance, repair, and replacement work as may be reasonably necessary to ensure the Maryland Street Connection complies with the Maintenance Standards (collectively, the "P70 Master Developer Maintenance Obligations", and, together with the SFPUC Maintenance Obligations, the "Maintenance Obligations").

3.8 Mechanics' Liens. The P70 Developer and PPS Master Developer shall keep the Affected Property free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by such Party (the "Responsible Party") or any of its Agents or Permittees. If a Responsible Party does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action as is reasonably acceptable to any other Party, such other Party shall have, in addition to all other remedies provided by this Agreement or by Law, the right but not the obligation to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by such other Party (together with interest thereon at the Interest Rate computed from the date such other Party makes such payment until paid by the Responsible Party or its Permittees) for such purpose and all expenses incurred by such other Party in connection therewith must be reimbursed to such other Party by the Responsible Party (or its Permittees) within thirty (30) days following demand by such other Party.

3.9 Performance of Maintenance Obligations and Alterations. Each Party performing Maintenance Obligations shall use commercially reasonable efforts to: (a) protect the Affected Property and the users thereof and any improvements located thereon from injury or damage arising out of or caused by such performance; (b) perform any such Maintenance Obligations at a time, for a duration and in such manner so as not to unreasonably impair or unreasonably interfere with the use, occupancy, operation of, or ingress to and egress from the Affected Property and adjacent streets (including Craig Lane and 22nd Street); (c) do such things as reasonably necessary to keep those portions of the Affected Property and areas in the immediate vicinity of the Affected Property in a safe and clean condition for the duration of such Maintenance Obligations; (d) minimize the scope and duration of any work that affects the ability of the Maryland Street Sewer Connection to convey all sewage flows from the PPS Project to the sewer system located on the Pier 70 Property; and (e) perform any such Maintenance Obligations expeditiously, diligently and in accordance with good construction and engineering practices and shall comply with the requirements of applicable Regulatory Agencies and other Persons as reflected in any recorded restrictions applicable to the Affected Property (or any portion thereof) and with the requirements of applicable Law. Except in the case of an Emergency, prior to entry to the Affected Property for Maintenance Obligations that could be reasonably anticipated to create construction impacts (such as noise or dust), or affect ingress or egress from the Affected Property to the adjacent property, the applicable Party shall provide the adjoining owner (including each Pier 70 Vertical Developer) with at least ten (10) Business Days' notice describing the proposed work, the hours of

construction, the duration of the work and the identity of and contact information for the Person conducting the work. The Parties shall reasonably cooperate with each other to minimize impacts on access, operation and occupancy of their respective properties that may be caused by the applicable Maintenance Obligations.

4. INSURANCE; INDEMNIFICATION

4.1 Insurance. Commencing as of the Commencement of Construction of the (i) Maryland Street Connection or (ii) SFPUC Sewer Connection, and continuing until City Acceptance, P70 Master Developer and PPS Master Developer shall, at P70 Master Developer's and PPS Master Developer's sole cost and expense, respectively, obtain and maintain in force at all times the insurance required under Exhibit I attached hereto.

4.2 Changes to Insurance Coverage. Each Party agrees to review and negotiate in good faith the coverage amounts for all insurance required under Exhibit I attached hereto on the request of any Party (but not more than once in any five (5) year period and not earlier than the Notice of Completion of the earlier to occur of Notice of Completion of the (i) Maryland Street Connection or (ii) SFPUC Sewer Connection), and to adjust such coverages as determined by the Parties, each in their reasonable discretion, to be commercially reasonable based on the then-current market, availability and business conditions.

4.3 Indemnification. Pursuant to section 4.10 of the PPS DA, PPS Master Developer has agreed to indemnify the City and its officers, agents and employees against certain Losses (as defined in the PPS DA). Under this Agreement, such indemnifications shall extend and apply to all Losses arising out of or resulting from the acts or omissions of PPS Master Developer in entering upon or performing activities upon the Affected Property under this Agreement, subject to the terms and conditions of such indemnifications set forth in the PPS DA. Pursuant to section 4.5 of the Pier 70 DA, P70 Master Developer has agreed to indemnify the City Parties (as defined in the Pier 70 DA) against certain Losses (as defined in the Pier 70 DA). Under this Agreement, such indemnifications shall extend and apply to all Losses arising out of or resulting from the acts or omissions of P70 Master Developer in entering upon or performing activities upon the Affected Property under this Agreement, subject to the terms and conditions of such indemnifications set forth in the Pier 70 DA. All indemnifications herein shall survive the completion or other termination of this Agreement, subject to the terms and conditions therefor set forth in the PPS DA or Pier 70 DA, as applicable. The indemnities herein shall in no way be limited by the insurance requirements contained in this Agreement, or in any other document or agreement between the Parties.

5. CASUALTY AND RESTORATION

5.1 Intentionally omitted.

5.2 P70 Master Developer's Restoration Obligation. If the Maryland Street Connection is damaged or destroyed by casualty during the period commencing upon the Notice of Completion of the Maryland Street Connection and continuing until City Acceptance of the Maryland Street Connection, then P70 Master Developer shall, at its sole cost, restore the Maryland Street Connection in accordance with the requirements set forth in Section 5.3 herein.

5.3 Restoration Work. Any restoration of the SFPUC Sewer Connection or Maryland Street Connection that is required hereunder shall be undertaken promptly and with due diligence and commercially reasonable efforts, subject to Force Majeure, in accordance with [___]¹ and, to the extent that any material changes to the original plans and specifications for the SFPUC Sewer Connection or Maryland Street Connection are subject to design review by the City, subject to Section 3.1.

5.4 Cooperation. Each Party shall cooperate in good faith with respect to the restoration of the SFPUC Sewer Connection or Maryland Street Connection, including by entering into further agreements and taking other reasonable actions required to restore the SFPUC Sewer Connection or Maryland Street Connection in a timely, safe and efficient manner.

6. DEFAULTS AND REMEDIES

6.1 Event of Default. If any Party fails to perform its Maintenance Obligations (regardless of whether such failure was caused by Force Majeure) and such failure continues without cure for more than thirty (30) days following written notice from any other Party specifying the nature of such failure (or, if such cure cannot be reasonably completed within such thirty (30) day period, the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to prosecute such cure diligently to completion within a reasonable time) (an “Event of Default”), then such other Party may, unless prohibited by Laws, perform such Maintenance Obligations on behalf of and for the account of the defaulting Party. The reasonable costs and expenses of the other Party in performing any such Maintenance Obligations permitted under this Section 6.1 shall be reimbursed by the defaulting Party within thirty (30) days of demand by the other Party.

6.2 No Termination for Default. No default (including an Event of Default) by any Party under this Agreement shall entitle any other Party to cancel, rescind or otherwise terminate this Agreement.

6.3 Payments. Unless provision is made for a specific time period, any sums payable by a Party to any other Party under the terms of this Agreement shall be due and paid on or before the fifteenth (15th) day after receipt of notice of such payment obligation (together with reasonable supporting documentation) and such amount shall bear interest at the Interest Rate from and after the day after it was due to and including the date of payment thereof.

6.4 Injunctive Relief. Each Party shall be entitled at any time after a default or threatened default by P70 Master Developer or PPS Master Developer to seek injunctive relief or an order for specific performance where appropriate to the circumstances of such default or threatened default. In addition, after the occurrence of a default, a non-defaulting Party shall be entitled to any other equitable relief that may be appropriate to the circumstances of such default. In the event that a dispute arises regarding any amounts owed, the Parties shall first meet and confer in good faith to resolve such dispute for a period of no less than thirty (30) days (except in the event of an Emergency or as they may have otherwise agreed in writing).

¹ NTD: Brookfield, are there appropriate restoration provisions in the P70 Lease that we can rely on here?

7. TRANSFER AND ASSIGNMENT

7.1 Transfer by PPS Master Developer. PPS Master Developer shall not Transfer its right, title and interest in and to this Agreement without the prior approval of Port, SFPUC and P70 Master Developer; provided, however, that if PPS Master Developer transfers all or any portion of its right, title and interest in and to the PPS DA to any Person, then PPS Master Developer may contemporaneously Transfer its right, title and interest in and to this Agreement to such Person (for the avoidance of doubt, without obtaining any consent of Port, SFPUC or P70 Master Developer). The foregoing shall not be deemed to prohibit or otherwise restrict PPS Master Developer from granting easements, leases, subleases, licenses or permits to facilitate the development, operation and use of the PPS Project in whole or in part.

7.2 Transfer by P70 Master Developer. P70 Master Developer shall not Transfer (i) its right, title or interest in or to any portion of the Affected Property or (ii) its right, title and interest in or to this Agreement, in each case without the prior approval of PPS Master Developer, Port, and SFPUC; provided, however, that P70 Master Developer may (a) Transfer all or any portion of its right, title and interest in the Affected Property to the City without obtaining any consent of PPS Master Developer or SFPUC, (b) during the period commencing upon the Substantial Completion of Maryland Street Connection and continuing until City Acceptance, P70 Master Developer shall have the right, without the approval of any other Party, to Transfer all or any portion of its right, title and interest in and to the Affected Property together with its corresponding right, title and interest in and to this Agreement to an Association, and (c) to the extent that P70 Master Developer transfers its right, title and interest in and to the Pier 70 Master Lease with respect to all or any portion of the Affected Property to any Person, then P70 Master Developer shall contemporaneously Transfer its corresponding right, title and interest in and to this Agreement to such Person (for the avoidance of doubt, without obtaining any consent of any other Party). In the event that P70 Master Developer transfers only a portion of the Affected Property to any Person, then P70 Master Developer shall retain its right, title and interest in and to this Agreement as it relates to the non-transferred portion of the Affected Property. The foregoing shall not be deemed to prohibit or otherwise restrict P70 Master Developer from granting easements, leases, subleases, licenses or permits to facilitate the development, operation and use of the Pier 70 Project in whole or in part, solely as may be authorized pursuant to the Pier 70 Master Lease.

7.3 Release. To the extent that a Party Transfers this Agreement as permitted hereunder the transferor shall continue to be an “Additional Insured” for all purposes under Exhibit I with respect to matters arising prior to the date of Transfer but shall otherwise have no further rights, obligations or liabilities hereunder.

7.4 Successor Owners. Without limiting the foregoing, any Person to whom the Affected Property, or any portion thereof, is Transferred shall automatically, by acceptance of such title or portion thereof, be deemed to be a successor owner with respect thereto, and to have assumed all obligations hereof relating thereto. Each such transferee shall be deemed to have assumed the obligations hereunder to the extent of such Transfer. Subject to the provisions of this Agreement, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land with respect to the Pier 70

Property (but not the PPS Property) pursuant to Law, including California Civil Code Section 1468.

8. MISCELLANEOUS [TBD]

8.1 Term. This Agreement shall be effective upon the Effective Date and shall continue until the latest of (the “Term”) (i) City Acceptance of the Maryland Street Connection, (ii) City Acceptance of the SFPUC Sewer Connection and the termination or expiration of the P70 DDA, or (iii) City acceptance of the LPS. Notwithstanding the foregoing, if PPS Master Developer elects to terminate the Cost-Sharing Agreement pursuant to section 40 thereof (which election may only be made prior to the earliest to occur of: (i) CBC’s approval of the LPS Engineer, (ii) delivery of the MSC Initiation Notice, or (iii) delivery of the SFPUC Sewer Connection Notice (as such capitalized terms are defined therein), this Agreement shall automatically terminate in its entirety. If this Agreement terminates, PPS Master Developer shall provide a recordable memorandum of termination to remove this Agreement from title to the Affected Property. If PPS Master Developer fails to provide the memorandum, within thirty (30) days, through this Agreement, PPS Master Developer authorizes City to execute and record the same. If this Agreement terminates, PPS Master Developer will need City’s authorization to file a memorandum of termination to remove this Agreement from title to the PPS Property. Except pursuant to this Section 8.1, the Agreement may only be terminated with the mutual written consent of the Parties.

8.2 Recording. The Parties agree that PPS Master Developer shall record against the Affected Property and PPS Property this Agreement and any amendment hereto in the Official Records promptly following the Effective Date or the effective date of such amendment, as applicable, with recording fees (if any) to be borne by PPS Master Developer.

8.3 Survival. The provisions of this Agreement that contemplate performance after the expiration of the Term or earlier termination of this Agreement shall survive the expiration of the Term or earlier termination of this Agreement.

8.4 Incorporation of Exhibits. Each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

8.5 Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to Persons or circumstances other than those in respect to which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

8.6 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

8.7 References to the Covenants in Deeds. Deeds to and instruments affecting the Affected Property may contain the Restrictions by reference to this Agreement; but regardless of whether any such reference is made in any deed or instrument, each and all of the Restrictions

shall be binding upon the Person claiming through any such deed or instrument and such Person's heirs, executors, administrators, successors and assigns.

8.8 Interpretation of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement, and its terms and provisions have been reviewed and revised by legal counsel for Port, SFPUC, PPS Master Developer and P70 Master Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. Each reference in this Agreement to this Agreement shall be deemed to refer to this Agreement as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. Wherever in this Agreement the context requires, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Agreement, including its Exhibits, reference is made to any Recital, Article, Section, Exhibit, Schedule or defined term, the reference shall be deemed to refer to the Recital, Article, Section, Exhibit, Schedule, or defined term of this Agreement. Any reference in this Agreement to a Recital, an Article or a Section includes all subsections and subparagraphs of that Recital, Article or Section. Section and other headings and the names of defined terms in this Agreement are for the purpose of convenience of reference only and are not intended to, nor shall they, modify or be used to interpret the provisions of this Agreement. Except as otherwise explicitly provided herein, the use in this Agreement of the words "including", "such as" or words of similar import when accompanying any general term, statement or matter shall not be construed to limit such term, statement or matter to such specific terms, statements, or matters. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail. Statements and calculations in this Agreement beginning with the words "for example" or words of similar import are included for the convenience of the Parties only, and in the event of a conflict between such statements or calculations and the remaining provisions of this Agreement, the remaining provisions shall prevail. Words such as "herein", "hereinafter", "hereof", "hereby" and "hereunder" and the words of like import refer to this Agreement, unless the context requires otherwise. Unless the context otherwise specifically provides, the term "or" shall not be exclusive and means "or, and, or both".

8.9 Notices. Any notice or communication required or authorized by this Agreement (as, for example, where a Party is permitted or required to "notify" the other, but not including communications made in any meet and confer or similar oral communication contemplated hereunder) shall be in writing and may be delivered personally, by registered mail, return receipt requested, or by reputable air or ground courier service. Notice, whether given by personal delivery, registered mail, or courier service, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Any Party may at any time, upon notice to each other applicable Party, designate any other person or address in substitution of the person or address to which such notice or communication shall be given. Such notices or communications shall, subject to the foregoing, be given to the Parties at their addresses set forth below:

All notices intended for PPS Master Developer shall be addressed to:

California Barrel Company LLC
c/o Associate Capital
2325 3rd Street #434
San Francisco, California 94107
Attention: Jamie Brown, Vice President – Legal

with a copy to:

J. Abrams Law, P.C.
538 Hayes Street
San Francisco, California 94102
Attention: Jim Abrams, Esq.

and with a copy to:

Paul Hastings LLP
101 California Street, 48th Floor
San Francisco, California 94111
Attention: David Hamsher, Esq.

All notices intended for Port shall be addressed to:

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, California 94111
Attention: Deputy Director, Real Estate and Development

with a copy to:

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, California 94111
Attention: Port General Counsel

All notices intended for SFPUC shall be addressed to:

San Francisco Public Utilities Commission
General Manager
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102
Reference: Potrero Power Station Project – Northern Connection

with a copy to:

Office of the City Attorney
City Hall, Room 234

1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate & Finance Team
Re: Potrero Power Station Project – Northern Connection

Director of Public Works
City and County of San Francisco
c/o Infrastructure Task Force Manager
Potrero Power Station Mixed-Use Development Project
49 South Van Ness Avenue
San Francisco, California 94103

All notices intended for P70 Master Developer shall be addressed to:

Brookfield Properties
875 Howard Street, Suite 330
San Francisco, California 94103
Attention: Jack Sylvan
RE: Pier 70 ([_____])

with copies to:

Brookfield Properties
Key Tower
127 Public Square, Suite 2415
Cleveland, Ohio 4414
Attention: Matthew Elsesser

Brookfield Properties
3200 Park Center Drive Suite 1000,
Costa Mesa, California 92602
Attention: Amy Arentowicz, Sr. Vice President/ Legal Development

Gibson Dunn & Crutcher
555 Mission Street, Suite 3000
San Francisco, California 94105
Attention: Neil H. Sekhri
Re: Pier 70 ([_____])

All notices intended for a Pier 70 Vertical Developer shall be addressed to such Pier 70 Vertical Developer at the address provided in its joinder pursuant to Section 8.31 herein.

For the convenience of the Parties, PPS Master Developer may from time-to-time record in the Official Records a statement of the then current addresses of the Party's determined in accordance with this Section 8.10.

8.10 Estoppel Certificates. Each Party (the “Responding Party”), at any time and from time to time upon not less than thirty (30) days’ prior written notice from any other Party (the

“Requesting Party”), shall execute and deliver to the Requesting Party, or, at the Requesting Party’s request, to any mortgagee or a bona fide purchaser under an agreement of sale or similar document, a certificate setting forth the following: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications); (b) whether, to the Responding Party’s knowledge, the Requesting Party has paid all amounts payable under this Agreement when due and payable; and (c) whether, to the Responding Party’s knowledge, there are then existing any defaults by the Requesting Party in the performance of its obligations under this Agreement (and, if so, specifying same). For purposes of this Section 8.11, the phrase “to the Responding Party’s knowledge” means the actual knowledge of the individual representative of the Responding Party most knowledgeable with respect to the foregoing (but without any personal liability of such individual). Such certificate shall act as a waiver of any claim by the Responding Party to the extent such claim is based upon facts contrary to those asserted in such certificate and to the extent that the claim is asserted against a bona fide purchaser under an agreement of sale or similar document or against any mortgagee for value, without knowledge of facts contrary to those contained in the certificate and who has acted in reasonable reliance upon the certificate. However, such certificate shall in no event subject the Responding Party to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of the Responding Party to disclose correct or relevant information. Each Responding Party shall be entitled to receive a similar certificate from the Requesting Party as a condition to the Responding Party’s delivery of the certificate requested by the Requesting Party.

8.11 No Partnership. Neither anything contained in this Agreement, nor any acts of the Parties, shall be deemed or construed by any Person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Parties.

8.12 Remedies; Limitations on Liability. In the event of a default by any Party under this agreement, the non-defaulting Party shall have the remedies set forth in the P70 DDA and/or the PPS DA, as applicable. The liability of any Party under this Agreement will be limited as against the Port or the City as set forth in the P70 DDA or PPS DA as applicable. This Agreement is executed by the authorized representatives of each Party solely as representatives of the same and not in their own individual capacities, and each Party’s advisors, trustees, commissioners, directors, officers, employees, beneficiaries, shareholders, participants or agents shall not be personally liable in any manner or to any extent under or in connection with this Agreement.

8.13 No Third Party Benefited. This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any Person except to the extent expressly provided herein. For avoidance of doubt, except to the extent expressly provided herein, only a Party shall have the right to enforce this Agreement.

8.14 Approvals. In any instance in which a Party shall be requested to approve of any matter with respect to which such Party’s approval is required by any of the provisions of this Agreement, such approval shall not be effective unless given in writing, and shall not be unreasonably withheld, conditioned or delayed, unless the provisions of this Agreement with respect to a particular approval shall expressly provide that the same may be given or refused in the sole judgment or sole discretion (or words of similar import) of any Party (in which event such approval may be withheld or given arbitrarily and without explanation) or otherwise expressly

provide standards for such particular approval. Unless provision is made for a specific time period, each response to a request for a consent or approval required to be considered pursuant to this Agreement shall be given by the Party to whom directed promptly (and in any event within thirty (30) days) after receipt thereof. Each disapproval shall be in writing and, the reasons therefor shall be clearly stated. Notwithstanding anything contained herein to the contrary, the provisions of this Section 8.15 do not apply in any manner or fashion to any request that requires an amendment to this Agreement, such requests being governed solely by the provisions of Section 8.20. Nothing in this Section is intended to modify the City's review standards or obligations for design, inspection, issuance of Notice of Completion, or City Acceptance under the P70 DA, P70 ICA, PPS DA, PPS Phase 1 PIA, or Pier 70 PIA.

8.15 No Merger. Neither this Agreement nor any portion hereof shall be extinguished by merger through the operation of Law alone, but only by a recorded instrument specifically so providing.

8.16 Entire Agreement. This Agreement, including the preamble, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement (including the Cost-Sharing Agreement), constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior agreements and understandings relating to the subject matter contained herein. Prior drafts of this Agreement and changes from those drafts to the executed version of this Agreement shall not be introduced as evidence in any litigation or other dispute resolution proceeding by the Parties or any other Person, and no court or other body shall consider such drafts or changes in interpreting this Agreement.

8.17 Force Majeure. If a Party shall be prevented or delayed from the performance of any act required hereunder by reason of: (i) domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots; (ii) acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; (iii) epidemics, pandemics and other public health crises affecting the workforce by actions such as quarantine restrictions; (iv) inability to secure necessary labor, materials, or tools (but only if the Party claiming delay has taken reasonable action to obtain them on a timely basis) due to any of the above events, freight embargoes, lack of transportation; or (v) any other causes (excluding financial difficulties) beyond the reasonable control and without the fault of the Party claiming the delay, the performance of such act (excluding any payment, charge or expense, due and payable hereunder) shall be excused for the period of delay (such circumstances, a "Force Majeure"). Without limiting the foregoing, any Party asserting that a Force Majeure circumstance has or is occurring shall (x) give written notice thereof to the other Parties and the period of Force Majeure shall commence to run not earlier than thirty (30) days prior to the date of such written notice, and (y) use reasonable efforts to mitigate the effects of such excused performance.

8.18 Governing Law; Selection of Forum. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California (without regard to conflict of law principles) and the City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably

waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

8.19 Amendment. This Agreement may be amended or supplemented only by an instrument in writing executed by the Parties.

8.20 Successors and Assigns. This Agreement, except as otherwise provided herein, is binding upon and shall inure to the benefit of the Parties (for the avoidance of doubt, including their respective successors and permitted assigns).

8.21 Time. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement. References to time shall be to the local time in the City on the applicable day. References in this Agreement to days, months and quarters shall be to calendar days, months and quarters, respectively, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice, meet a deadline or to undertake any other action occurs on a day that is not a Business Day, then the last day for giving the notice, replying to the notice, meeting the deadline or undertake the action shall be the next succeeding Business Day, or if such requirement is to give notice before a certain date, then the last day shall be the next succeeding Business Day. Where a date for performance is referred to as a month without reference to a specific day in such month, or a year without reference to a specific month in such year, then such date shall be deemed to be the last Business Day in such month or year, as applicable.

8.22 No Waiver. No waiver of any default by any Party shall be implied from any omission by any other Party to take any action in respect of such default, whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any such Party to or of any act or request by any other Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Failure of a Party to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

8.23 Mitigation of Damages. In all situations arising out of this Agreement, each Party shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party.

8.24 Further Acts. Each Party agrees to perform any further acts and to execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement and provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement this Agreement.

8.25 Agreement Costs. Except as expressly provided in this Agreement, P70 Master Developer and PPS Master Developer shall pay their own costs and expenses arising in connection with the negotiation, drafting and performance of this Agreement (including its own attorneys' and advisors' fees, charges and disbursements). City costs and expenses arising in connection with the negotiation, drafting and performance of this Agreement (including its own attorneys' and advisors' fees, charges and disbursements) will be paid by the PPS Master Developer in accordance with the PPS DA.

8.26 No Recourse to General Fund, Port Harbor Fund, or SFPUC Ratepayers In no event may P70 Master Developer or PPS Master Developer compel: (1) the City to use funds in or obligate the City's General Fund; (2) the Port to use funds in or obligate the Port Harbor Fund; or (3) the City to use funds in or obligate SFPUC ratepayer funds, in any case to reimburse PPS Master Developer or P70 Master Developer for any other costs associated with negotiating or implementing this Agreement or to satisfy any claim of damages for a breach by the Port or the City under this Agreement.

8.27 MacBride Principles - Northern Ireland. City 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. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. PPS Master Developer, P70 Master Developer and each Pier 70 Vertical Developer acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

8.28 Sunshine Ordinance. The Parties understand and agree that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 et seq.), this Agreement and any and all records, information and materials submitted to Port hereunder may be public records subject to public disclosure upon request. A Party may mark or designate as confidential, or otherwise request to be kept confidential, materials that such Party submits to Port that such Party in good faith believes are or contain trade secrets or proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, and Port shall attempt to maintain the confidentiality of such materials to the extent permitted by Law. When a Port official or employee receives a request for any such materials, Port may request further evidence or explanation from such Party. Notwithstanding the foregoing, to the extent that Port determines that the information in such materials does not constitute a trade secret or proprietary or other information protected from disclosure, Port shall notify such Party of that conclusion and that such information will be released by a specified date in order to provide such Party an opportunity to obtain a court order prohibiting disclosure.

8.29 Conflicts of Interest. Through its execution of this Agreement, PPS Master Developer, P70 Master Developer and each Pier 70 Vertical Developer each acknowledge that it is familiar with the provisions 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 California Government Code, and certify that it does not know of any facts that constitute a violation of such provisions and agrees that it will promptly thereafter notify Port if it becomes aware of any such fact during the term of this Agreement.

8.30 Conflict with PPS Phase 1 PIA. In case of any conflict between this Agreement and the PPS Phase 1 PIA, the PPS Phase 1 PIA shall control.

8.31 Authority; No Conflicts. Each Party represents and warrants to each other Party that such Party (i) has the requisite power and authority to execute and deliver this Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by such Party and (ii) is not a party to any other agreement that could reasonably be expected to conflict with such Party's obligations under this Agreement.

8.32 Attorneys' Fees and Costs. If any action, proceeding or arbitration is brought by the P70 Master Developer or PPS Master Developer against the other master developer to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from each other applicable Party, in addition to all other damages, all costs and expenses of such action, proceeding or arbitration, including such Party's Attorneys' Fees and Costs. The phrase "prevailing Party" as used in this Section 8.32 means the Party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, PPS Master Developer, Port, SFPUC and P70 Master Developer have executed this Agreement as of the Effective Date.

PPS MASTER DEVELOPER:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the San Francisco Port Commission

By: _____
Name: _____
Title: _____

SFPUC:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the San Francisco Public Utilities Commission

By: _____
Name: Dennis J. Herrera
Title: General Manager

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Annette Mathai-Jackson
Deputy City Attorney

P70 MASTER DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

DRAFT

EXHIBIT H

List of documents required by City in order to issue a Notice of Completion

1. Subdivider Request Letter for Notice of Completion (“NOC”)
2. Contractor Substantial Completion Letter
3. Civil Engineer Completion Notice
4. Geotechnical Engineer Completion Letter
5. Landscape Architect Completion Notice
6. Construction Manager Completion Notice
7. City Final Punch-list Approval
8. Utility Conformance Letter
9. As-Built Plan Approval
10. Recorded Notice of Completion
11. Survey Monuments
12. Test Reports
13. Joint Trench Conduits mandrel test
14. Confirmation of Removal of all Non-Compliance Reports (“NCR”)
15. Confirmation of all Change Orders/Instructional Bulletins
16. Confirmation from City that Spare Parts have been provided (as applicable)
17. Operation and Maintenance Manuals
18. NOC Recommendation from Public Works

EXHIBIT I

List of documents required by the City in order to make a Request for Acceptance

1. Subdivider Request for Acceptance Letter
2. Lien Notification to General Contractor and Subs
3. Utility Bill of Sale
4. 3rd Party Reimbursement Checks-Copies
5. Assignment of Warranties and Guaranties
6. License Agreements (as applicable)
7. Mechanic's Lien Guarantee
8. Modified Offers of Improvements (as applicable)
9. Updated Grant Deeds (as applicable)

EXHIBIT J-1

Performance Bond

EXHIBIT J-2
Payment Bond

EXHIBIT J-3
Monument Bond

EXHIBIT K

Form of Notice of Termination

This instrument is exempt from Recording Fees (CA Govt. Code § 27383)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

[Subdivider:

Attn: _____]

APN(s): [_____] SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

NOTICE OF TERMINATION

This NOTICE OF TERMINATION (this “**Notice of Termination**”) is made and entered into as of [INSERT DATE THAT TERMINATION OCCURRED] ____, 20__ (the “**Effective Date**”) by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), and [NAME OF SUBDIVIDER], a [_____] (“**Subdivider**”).

RECITALS

- A. Reference is hereby made to that certain Public Improvement Agreement between the City and Developer, dated as of ____, 2022 and recorded in the Official Records on ____, 2022 as Document No. _____ [DESCRIBE ANY AMENDMENTS] (collectively, the “**Agreement**”). All initially capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Agreement.
- B. As of the Effective Date, the Agreement terminated in accordance with its terms [in its entirety] [with respect to the portion of the Project Site described on Exhibit A attached hereto (the “**Property**”)].
- C. Pursuant to section 12(c) of the Agreement, the City and Subdivider desire to memorialize in the Official Records that as of the Effective Date the Agreement

terminated in accordance with its terms [in its entirety] [with respect to the Property].

NOW, THEREFORE, the City and Subdivider do hereby acknowledge and agree that as of the Effective Date the Agreement terminated in accordance with its terms [in its entirety] [with respect to the Property]. Except as expressly provided herein, nothing contained in this Notice of Termination shall modify the Agreement. This Notice of Termination may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Notice of Termination has been executed by the City and Developer as of the Effective Date.

SUBDIVIDER:

[_____] ,
a [_____]

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Name: _____
Title: Deputy City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____, 20__ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____, 20__ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

PROPERTY

[To be provided if applicable]