City draft to be lodged with Port Commission 1/19/18.

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Angela Calvillo
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San Francisco, CA 94102

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Recorder's Stamp

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

SEAWALL LOT 337 ASSOCIATES, LLC

RELATING TO DEVELOPMENT OF CITY LAND

UNDER THE JURISDICTION OF

THE PORT COMMISSION OF SAN FRANCISCO

FOR THE MISSION ROCK PROJECT

[Insert Reference Date]

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DEVELOPMENT AGREEMENT
Mission Rock Project at
Seawall Lot 337 and Pier 48

This **DEVELOPMENT AGREEMENT** ("**Development Agreement**") is between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (including its agencies and departments, the "**City**"), and Seawall Lot 337 Associates, a Delaware limited liability company ("**Developer**") (each, a "**Party**"), and is dated as of the Reference Date in relation to the proposed Mission Rock Project (the "**Project**" or "**Mission Rock**") at Seawall Lot 337 ("**SWL 337**") and Pier 48 (collectively, the "**Project Site**"). This Development Agreement is entered into in conjunction with the Disposition and Development Agreement (the "**DDA**") between the City, acting by and through the San Francisco Port Commission (the "**Port Commission**" or "**Port**"), and Developer, which establishes the Port's and Developer's respective rights and obligations for the Project.

RECITALS

A. The Port owns about 7 miles of tidelands and submerged lands along San Francisco Bay, including approximately 28 acres that include the Project Site, under Port jurisdiction in the central waterfront area of San Francisco. The Project Site is bounded generally by China Basin to the north, San Francisco Bay to the east, Mission Rock Street to the south, and Third Street to the west, and is more particularly described in **DA Exhibit A**.

B. Seawall lots are tidelands that were filled and cut off from the waterfront by the construction of the great seawall in the late 19th and early 20th centuries, and by the construction of the Embarcadero roadway which lies, in part, over a portion of the great seawall. Seawall Lot 337, the largest of the designated seawall lots, is located just south of China Basin and for years has been used as a surface parking lot.

C. Through legislation commonly known as SB 815, as amended by AB 2797, the California Legislature found that the revitalization of Seawall Lot 337 is of particular importance to the State of California. Under SB 815, the Port is authorized to ground lease portions of Seawall Lot 337 to permit development of Improvements that may be used for nontrust uses to enable higher economic development and revenues. Some of the revenues from these leases will be advanced to pay for public infrastructure serving the Project Site, then repaid with Project-generated lease revenues, special taxes, and property taxes. The Port will use revenues from leases permitting nontrust uses, as well as its return on funds advanced for infrastructure investment, to preserve its historic resources and for other public trust consistent uses permitted under SB 815.

D. Following a public solicitation process to implement goals and objectives developed through a multi-year community process, the Port Commission awarded Developer the opportunity to negotiate exclusively for the lease, construction, and operation of the Project Site in 2010. Negotiations resulted in a Term Sheet that the Port Commission and the Board of Supervisors endorsed in 2013.

E. The Project will be a new mixed-use neighborhood created on a site now used principally to provide parking for the Ballpark. The Project will complement and link Mission Bay to the urban fabric of the City. At build-out, the Project would include approximately

3,600,000 gsf of above-grade development and create approximately 8 acres of new and expanded parks and shoreline access.

F. SWL 337 will be divided into 12 Development Parcels shown on the Site Plan (**DA Exhibit B**). The Project will be developed in Phases, consisting of one to four Development Parcels each, under the DDA. Eleven of the parcels will provide a mix of commercial/office, retail, and market rate and affordable residential uses. The precise combination of uses will be determined by market demands as the Project progresses. A parking facility will be built on Development Parcel D2, and an additional underground parking facility may be built under Mission Rock Square. Parking on the Project Site will serve new development and other nearby uses, including San Francisco Giants baseball games and other events at the Ballpark. Most new buildings will have ground floor retail or neighborhood-serving uses.

G. Developer is the master developer for the Project Site and is responsible for subdividing and improving the Project Site with Horizontal Improvements needed or desired to serve vertical development. In accordance the DDA, the Port and Developer will enter into a Master Lease for the Project Site (except Pier 48). Under the DDA, Developer has an Option to develop Vertical Improvements on developable parcels known as Option Parcels. Each Development Parcel that the Port conveys to a Vertical Developer by a Parcel Lease will be released from the Master Lease. Horizontal and vertical development of the Project will conform to applicable provisions of the SUD, which refers to the Design Controls, the Waterfront Plan, and the DA Requirements.

H. The Port will lease Pier 48 to Developer under a separately negotiated interim lease for continued use for parking, events, and other compatible miscellaneous uses. The Port and Developer will work cooperatively to identify a long-term tenant to implement a historic rehabilitation and development plan for Pier 48 that will include a mix of uses to meet public trust requirements, including continued maritime operations on the south apron and public access.

I. On November 3, 2015, San Francisco voters approved the *Mission Rock Affordable Housing, Parks, Jobs and Historic Preservation Initiative* (Proposition D), which authorized increased height limits on SWL 337 and established a City policy to encourage development of the Project Site with the major features listed below. Proposition D amended the Zoning Map and added Section 291 to the Planning Code. Proposition D specifically provides that it is intended to encourage and implement the lease and development of the Project Site as described in SB 815 to support the purposes of the Burton Act, especially the preservation of historic piers and historic structures and construction of waterfront plazas and open space.

J. The Project is the culmination of many years of community-based planning and coordination with State Regulatory Agencies. The Project will create a vibrant mixed-use community, woven into the fabric of the surrounding Mission Bay and South Beach neighborhoods, without displacing any current residents or businesses. The Project will include between 1,000 and 1,950 new housing units, all of which are expected to be rental and 40% of which will be affordable to low- and middle-income households.

K. The Project will create approximately eight acres of major new and expanded parks, pedestrian plazas and rehabilitated public piers and wharves, and will also provide a

dynamic range of space for shops, restaurants, cafés, neighborhood-serving retail uses, such as a grocery store, and community spaces as well as commercial/office and light industrial space.

L. The Project will implement a Sustainability Strategy that provides leadership in long-term sustainability planning and design. Resilient design strategies will be implemented to respond to climate change and resulting sea level rise. The development of the under-utilized Project Site will generate significant revenues to the City and its Port, estimated at more than $1 billion over the life of Mission Rock, including increased rent payable to the Port of San Francisco, increased property, parking and sales taxes, and development fees, as described below.

M. The Project will create an estimated 13,500 temporary construction jobs and 11,000 permanent jobs on and off-site. Planning, design, and construction work for the Project will provide substantial contracting opportunities for local contractors and professional service firms as well as many businesses, employers, and organizations.

N. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State adopted the DA Statute, which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Under the DA Statute, the City adopted Chapter 56, establishing procedures and requirements for entering into a development agreement under the DA Statute. The Parties are entering into this Development Agreement in accordance with the DA Statute and Chapter 56. This Development Agreement is consistent with the requirements of Chapter 56, which requires a development agreement to state its duration, permitted uses of the property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.

O. The Project Approvals listed on **DA Exhibit C** entitle Developer's proposed Project, and authorize Developer to proceed with development in accordance with the Project Requirements under the DDA, which include this Development Agreement. The Parties intend for all acts referred to in this Development Agreement to comply with CEQA law, the DA Statute, Chapter 56, the DA Ordinance, the SUD Amendments, and all other Applicable Laws in effect on the Reference Date. This Development Agreement does not limit either the City's obligation to comply with CEQA Laws before taking any further discretionary action regarding the Project Site or Developer's obligation to comply with all Applicable Laws in the development of the Project.

AGREEMENT

1. DEFINITIONS

The attached **Appendix**, which includes *Part A, Standard Provisions and Rules of Interpretation* and pertinent definitions in *Part B,* is an integral part of this Development Agreement.

2. CERTAIN TERMS

2.1. Reference Date. Under Administrative Code section 56.14(f), this Development Agreement will be effective on the Reference Date. When the Reference Date is determined, the City will provide or substitute title page that specifies the date.

2.2. DA Term. The DA Term will begin on the Reference Date and continue through the DDA Term, subject to the following.

(a) Horizontal Development. An extension of the DDA Term under *DDA art. 4 (Excusable Delay)* or termination under *DDA art. 11 (Material Breaches and Termination)* as to any portion of a Phase, the Project, or the Project Site, will cause the DA Term to be extended or terminated as to the same portion of the Phase, the Project, or the Project Site automatically, without any action of the Parties. Likewise, the expiration of the DDA Term will cause the expiration of the DA Term.

(b) Vertical Development. An extension of the schedule of performance of the construction and completion of the Vertical Improvement under *VDDA § 12.1(b) (Required Commencement and Completion Dates for the Vertical Project)*, or termination of the Vertical DDA under *VDDA § 15.3 (Port Remedies for Vertical Developer Default)* as to any Vertical Improvement, will cause the DA Term to be extended or terminated as to the same Vertical Improvement or Vertical DDA automatically, without any action of the Parties. Likewise, the expiration of the term of a Vertical DDA will cause the expiration of the DA Term as to any Vertical Improvement or Vertical DDA.

2.3. Subdivision Maps. The term of a Tentative Map will extend to the end of the DA Term. But the term of a Tentative Map that is approved less than five years before the DA Term ends will be extended for the maximum period permitted under Subdivision Code section 1333.3(b).

2.4. Relationship to DDA.

(a) DDA Parameters. The City has approved this Development Agreement and granted other Project Approvals listed in **DA Exhibit C** to entitle the Project. This Development Agreement is a Transaction Document under the DDA, and this Development Agreement and the DDA are included in all references to the Transaction Documents. This Development Agreement incorporates by reference the DDA, including the Infrastructure Plan and all other exhibits. The DDA and its exhibits describe certain Associated Public Benefits that Developer is required to provide and obligations that Developer is required to perform under the DDA, which include all obligations described in **Article 4** (Developer Obligations). The DDA and its exhibits are subject to modification according to their terms without Board of Supervisors approval, except for changes that would be Material Changes.

(b) Development. As specified in **Article 6** (No Development Obligation), this Development Agreement does not obligate Developer to construct any Improvements at the Project Site, nor does it govern construction activities at the Project Site.

2.5. Recordation and Effect.

(a) Recordation. The Clerk of the Board of Supervisors will present this Development Agreement and any later amendments to the Assessor-Recorder for recordation in the Official Records within 10 days after receiving fully executed and

acknowledged original documents in compliance with section 65868.5 of the DA Statute and Administrative Code section 56.16.

(b) Binding Covenants. In accordance with section 65868.5 of the DA Statute, subject to **Section 11.2** (Effect of Transfer or Assignment), upon recordation of this Development Agreement:

(i) it will be binding on and inure to the benefit of the Parties and their respective successors; and

(ii) its provisions will be enforceable as equitable servitudes and will be covenants and benefits running with the land under applicable law, including California Civil Code section 1468.

(c) Constructive Notice. This Development Agreement, when recorded:

(i) gives constructive notice to every person; and

(ii) will be binding on, and burden and benefit, any Interested Person to the extent of its interest in the Project Site.

(d) Nondischargeable Obligations. Obligations under this Development Agreement are not dischargeable in Insolvency.

2.6. Relationship to Project.

(a) Planning as Regulator. Planning is the City Agency primarily responsible for monitoring and enforcing compliance with this Development Agreement. Under this Development Agreement, Planning will act in its regulatory capacity with respect to the Project.

(b) Port as Regulator. Under the DDA, the Port will act in its regulatory capacity to:

(i) issue construction

(ii) permits, certificates of occupancy, and certificates of completion for the Project;

(iii) coordinate City Agency review of Improvement Plans for Horizontal Improvements and Subdivision Maps for the Project Site in accordance with the DDA and the ICA;

(iv) coordinate City Agency review of Improvement Plans for Vertical Improvements, Deferred Infrastructure, and associated facilities and improvements in accordance with the SUD Amendments and the Design Controls; and

(v) monitor, in coordination with Other City Agencies, Developer's compliance with the Project Requirements, including Impact Fees and Exactions.

(c) Port as Fiduciary. The City has appointed the Port to act in a fiduciary capacity as the IFD Agent responsible for implementing the IFP, the Financing Plan, and the Acquisition Agreement and has agreed to undertake CFD Formation Proceedings to establish the CFD and appoint the Port to act in a fiduciary capacity as the CFD Agent responsible for implementing the RMA, the Financing Plan, and the Acquisition Agreement.

(d) City and Port. References in this Development Agreement to the "City" include the Port unless explicitly and unambiguously stated otherwise. References to both the City and the Port are intended to emphasize the Port's jurisdiction under Applicable Port Laws.

(e) City Agencies. The Board of Supervisors intends for the City to perform under this Development Agreement through its City Agencies and has contemporaneously approved interagency Transaction Documents for the Project that describe the respective roles of the Port and Other City Agencies.

(i) The ICA between the Port and the City describes the process for City Agency review and approval of Improvement Plans, Subdivision Maps, and other documents primarily in relation to horizontal development of the Project.

(ii) In the Tax Allocation MOU, the City, through the Treasurer and Tax Collector and the Controller, agrees to assist the Port in implementing the public financing for the Project.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1. Project.

(a) Vested Right to Develop. Developer will have the vested right to develop the Project in accordance with and subject to this Development Agreement and the DDA.

(b) Project Approvals. The Parties acknowledge that, subject to any required Later Approvals, Developer:

(i) has obtained all Project Approvals from the City required to begin construction of the Project; and

(ii) may proceed with the construction in accordance with the DDA after the Entitlement Date and, upon completion, use and occupy the Project Site as a matter of right.

3.2. Timing of Development. The DDA permits the development of the Project Site in Phases. The Phasing Plan and Schedule of Performance, respectively, each as modified in accordance with the DDA, will govern the construction phasing and timing of the Project. Compliance with Impact Fees and Exactions imposed by this Development Agreement will be coordinated with schedules under the DDA and the Vertical DDAs.

3.1. Dedication of Horizontal Improvements. Development of the Project Site requires Horizontal Improvements to support the development and operation of all Development Parcels.

(a) ICA Procedures. Under the ICA, Developer will take all steps necessary to construct and dedicate Horizontal Improvements that will be under the jurisdiction of Other Acquiring Parties to public use in accordance with the Subdivision Code, as modified by the DA Ordinance.

(b) DDA Procedures. Under the DDA, Developer will take all steps necessary to construct and dedicate Public Spaces and other public facilities that will be

under Port jurisdiction to public use in accordance with *DDA § 14.7 (Acceptance of Port Improvements)*.

3.2. Private Undertaking. Developer's proposed development of the Project Site is a private undertaking. Under the DDA, the Master Lease, the Pier 48 Lease, and Vertical DDAs, Developer or Vertical Developers will have possession and control of the Project Site, subject only to obligations and limitations imposed by those Transaction Documents and this Development Agreement.

4. DEVELOPER OBLIGATIONS

4.1. Associated Public Benefits.

(a) Benefits Exceed Legal Requirements. The Parties acknowledge that development of the Project in accordance with the DDA and this Development Agreement will provide Associated Public Benefits to the City beyond those achievable through existing laws.

(b) Consideration for Benefits.

(i) The City acknowledges that a number of the Associated Public Benefits would not be achievable without Developer's express agreements under the DDA and this Development Agreement.

(ii) Developer acknowledges that:

(1) the benefits it will receive provide adequate consideration for its obligation to deliver the Associated Public Benefits; and

(2) the Port would not be willing to enter into the DDA, and the City would not be willing to enter into this Development Agreement, without Developer's agreement to provide the Associated Public Benefits.

(c) Associated Public Benefits. Developer and Vertical Developers will deliver the following Associated Public Benefits under the DDA and other Transaction Documents in connection with the development of the Project.

(i) The Project will include a total of approximately eight acres of new or expanded parks, open spaces, streets, plazas, shoreline area improvements and associated publicly accessible facilities and improvements at build-out, as described generally in **DA Exhibit B** (Site Plan) and more specifically in the Infrastructure Plan and the Design Controls.

(i) At least 40% of the Residential Units developed at the Project Site will be Inclusionary Units affordable to low- and moderate-income households in compliance with the Housing Plan *(DDA Exh B5*).

(ii) Developer and Vertical Developers will implement the Transportation Exhibit *(DDA Exh B7*), including the following.

(1) Vertical Developers will pay the Transportation Fee described in **clause (i)** of **Subsection 5.4(b)(i)** (Impact Fees and Exactions). As indicated in the SFMTA Consent, SFMTA has agreed to apply the Total Fee Amount towards transit, bicycle, and pedestrian

improvements consistent with Planning Code section 411A.7, including Improvements that will improve transportation access and mobility in the neighborhoods surrounding the Project Site.

(2) Developer and Vertical Developers will also implement the TDM Plan in accordance with the MMRP and Transportation Plan, to reduce estimated one-way vehicle trips by at least 20% from the number of trips identified in the Project's Transportation Impact Study at Project build-out.

(iii) As described in the Sustainability Strategy (*DDA Exh B8*), Developer will:

(1) develop the Project Site with sustainable measures in accordance with the Design Controls, Infrastructure Plan, and TDM Plan, to enhance livability, health and wellness, mobility and connectivity, ecosystem stewardship, climate protection, and resource efficiency; and

(2) submit a report with each Phase Submittal for Phases after Phase 1 that describes the Project's performance towards achieving the goals and implementing the requirements and recommendations in the Sustainability Strategy.

(iv) Developer will comply with training and hiring goals for San Francisco residents and formerly homeless and economically disadvantaged individuals for temporary construction and permanent jobs under the Workforce Development Plan (*DDA Exh B6*), which includes a mandatory local hiring participation level of 30% per trade consistent with the policy in Administrative Code section 6.22(g)(3)(B).

(v) Vertical Developers will be required to provide opportunities for local business enterprises to participate in the economic opportunities created by the vertical development of the Project Site in compliance with the LBE Policy.

(vi) The Port will be asking the Board to establish a community facilities district over the Project Site to provide a funding source for long-term management and maintenance of Public Spaces and certain portions of the Public ROWs through Services Special Taxes levied on Taxable Parcels.

(vii) Under **clause (ii)** of **Subsection 5.4(b)(i)** (Impact Fees and Exactions), in lieu of Jobs/Housing Linkage Fees, each Vertical Developer of a Commercial Project will pay Jobs/Housing Equivalency Fees that will be used to subsidize development of Inclusionary Units in accordance with the Housing Plan.

(viii) The Project design reflects strategies to respond to anticipated sea level rise.

4.2. Delivery; Failure to Deliver.

(a) Conditions to Delivery. Developer's obligation to deliver Associated Public Benefits is expressly conditioned upon each of the following conditions precedent, unless Developer's actions or inaction causes the failure of condition.

(i) Developer is not obligated to deliver Associated Public Benefits to be provided in a Phase until Regulatory Agencies have issued all Later Approvals required to begin construction of Phase Improvements.

(ii) To the extent that an Associated Public Benefit is specific to or dependent on vertical development of a Development Parcel, the applicable Vertical Developer will not obligated to deliver the Associated Public Benefit until Regulatory Agencies have issued all Later Approvals required to begin construction of Vertical Improvements on the parcel.

(iii) All obligations to provide Associated Public Benefits will be subject to Excusable Delay under the DDA or the applicable Vertical DDA.

(b) Port's Rights if Not Delivered. If Associated Public Benefits are not delivered when required, Developer or the applicable Vertical Developer will be in default of its obligations, and the Port will be entitled to exercise its remedies under the DDA or the applicable Vertical DDA.

4.3. Payment of Planning Costs. Under the DDA, Developer will reimburse the City for Port Costs and Other City Costs. Planning will comply with *FP § 9.2 (Port Accounting and Budget)* and *ICA § 3.6 (Cost Recovery)* as a condition to obtaining reimbursement of Planning's Other City Costs. More specifically, Planning will provide quarterly statements for payment to Developer through the Port, which will be responsible for disbursing reimbursement payments from Developer.

4.4. Indemnification of City.

(a) Failure to Comply with DA Requirements. To the extent provided under the DDA, Developer agrees to indemnify the City Parties from Losses arising directly or indirectly from:

(i) any third party claim arising from a DA Default by Developer;

(ii) Developer's failure to comply with any Project Approval or Other Regulatory Approval;

(iii) any dispute between Developer and its contractors or subcontractors relating to construction of any part of the Project; and

(iv) any dispute between Developer and any DA Successor relating to any DA Assignment or obligations under this Development Agreement.

(b) Construction Obligations. To the extent provided under the DDA and Master Lease, Developer as to the Horizontal Improvements, and to the extent provided under its Vertical DDA and Parcel Lease, each Vertical Developer as to the pertinent Vertical Improvements, agrees to indemnify the City Parties from Losses arising from:

(i) the failure of any Improvements constructed at the Project Site to comply with all applicable laws, including any New City Laws permitted under this Development Agreement; and

(ii) any accident, bodily injury, death, personal injury, or loss or damage to property caused by the construction by Developer or any DA

Successor, or their agents or contractors, of any Improvements on the Project Site, or outside of the Project Site in connection with Project activities.

(c) Exclusions. Developer's and DA Successors' obligations will not apply to the extent that:

(i) the indemnification obligations are found unenforceable by a final judgment; or

(ii) the Loss is the result of the gross negligence or willful misconduct of City Parties or the breach by any City Party under a Transaction Document.

(d) Survival. The indemnification obligations under this Section will survive the DA Term.

4.5. Costa-Hawkins Waiver.

(a) State Policies. California directs local agencies regulating land use to grant density bonuses and incentives to private developers for the production of affordable and senior housing in the Costa-Hawkins Act (Cal. Gov't Code §§ 65915-65918). The Costa-Hawkins Act prohibits limitations on rental rates for dwelling units certified for occupancy after February 1, 1995, with certain exceptions. Section 1954.52(b) of the Costa-Hawkins Act creates an exception for dwelling units built under an agreement between the owner of the rental units and a public entity in consideration for a direct financial contribution and other incentives specified in section 65915 of the California Government Code.

(b) Waiver. Developer, on behalf of itself and its successors, agrees not to challenge and expressly waives any right to challenge Developer's obligations under the Housing Plan as unenforceable under the Costa-Hawkins Act. Developer acknowledges that the City would not be willing to enter into this Development Agreement without Developer's agreement and waiver under this Section. Developer agrees to include language in substantially the following form in all Assignment and Assumption Agreements and consents to its inclusion in all Parcel Leases and in recorded restrictions for any Development Parcel on which residential use is permitted.

> The Development Agreement and the DDA, which includes the Housing Plan, provide regulatory concessions and significant public investment to the Project Site that directly reduce development costs at the Project Site. The regulatory concessions and public investment include a direct financial contribution of net tax increment and other forms of public assistance specified in California Government Code section 65915. These public contributions result in identifiable, financially sufficient, and actual cost reductions for the benefit of Developer and Vertical Developers under California Government Code section 65915. In consideration of the City's direct financial contribution and other forms of public assistance, the Parties understand and agree that the Costa-Hawkins Act does not apply to any Inclusionary Unit developed at the Project Site.

4.6. Other Requirements. Subject to the DA Ordinance, Developer agrees to comply with all other applicable Port and City requirements, some of which are summarized

DDA Exh A6 (Other City Requirements), which is incorporated by reference under **Subsection 2.4(a)** (DDA Parameters).

4.7. Developer Mitigation Measures.

(a) Monitoring. Under the DDA, Developer is obligated to implement Developer Mitigation Measures identified in the MMRP. Planning may agree to undertake monitoring Developer's compliance with specified Developer Mitigation Measures on behalf of and at the request of the Port.

(b) Transportation Measures. Developer will enter into a Transit Mitigation Agreement with SFMTA that will obligate Developer to make a fair share contribution to the cost of providing additional bus service or otherwise improving service in accordance with Mitigation Measures M-TR-4.1 and M-TR-4.4. Upon execution, the Transit Mitigation Agreement will be incorporated by reference into this Development Agreement. Developer and SFMTA may modify the Transit Mitigation Agreement consistent with the MMRP without amending this Development Agreement.

5. VESTING AND CITY OBLIGATIONS

5.1. Vested Rights.

(a) Policy Decisions. By the Project Approvals, the Board of Supervisors and the Port Commission each made an independent policy decision that development of the Project, as described in and as may be modified by the Project Approvals, is in the City's best interests and promotes public health, safety, general welfare, and Applicable Port Laws.

(b) Effect of Final EIR. The Final EIR prepared for development of the Project Site contains a thorough analysis of the Project and possible alternatives in compliance with CEQA. The Project Approvals include resolutions by the Port Commission and the Board of Supervisors adopting CEQA Findings, including a statement of overriding considerations in accordance with CEQA Guidelines section 15093 for those significant impacts that could not be mitigated to a less than significant level.

(i) Based on the scope of review in the Final EIR, the City does not intend to conduct any further environmental review or require further mitigation under CEQA for any aspect of the Project that is vested under this Development Agreement. The City will rely on the Final EIR to the greatest extent permissible under CEQA with respect to all Later Approvals for the Project.

(ii) Developer acknowledges that the City's reliance on the Final EIR does not limit its discretion to:

(1) conduct additional environmental review in connection with any Later Approvals if required by Applicable Laws or unforeseen circumstances;

(2) impose conditions on any Later Approval that the City determines are necessary to mitigate adverse environmental impacts of Material Changes identified through the CEQA process or otherwise

required to address significant environmental impacts in accordance with CEQA; and

(3) require additional environmental review and additional Mitigation Measures due to New City Laws or changes to the Project.

(iii) Developer will comply with all Mitigation Measures imposed as applicable to each Project component identified in the MMRP as the responsibility of the "owner" or the "project sponsor," except for any Mitigation Measures that are expressly identified as the responsibility of a different person in the MMRP.

(c) Effect of General Plan Consistency Findings.

(i) In Motion No. 20019 adopting General Plan Consistency Findings for the Project, the Planning Commission specified that the findings also would support all Later Approvals that are consistent with the Project Approvals. To the maximum extent practicable, Planning will rely exclusively on Motion No. 20019 when processing and reviewing all Later Approvals requiring General Plan determinations.

(ii) Developer acknowledges that the General Plan Consistency Findings do not limit the City's discretion in connection with any Later Approval that requires new or revised General Plan consistency findings because of amendments to any Project Approval or any Material Change.

(d) Vested Elements. Developer will have the vested right to develop the Project in accordance with the Project Approvals, which include the following elements (collectively, the "**Vested Elements**"):

(i) proposed land use plan and parcelization;

(ii) locations and numbers of Vertical Improvements proposed;

(iii) proposed height and bulk limits, including maximum density, intensity, and gross square footages;

(iv) permitted uses; and

(v) provisions for open space, vehicular access, and parking.

(e) Applicable Laws. The Vested Elements are subject to and will be governed as specified in **Subsection 5.2(a)** (Agreement to follow Existing Policy). The expiration of a construction permit or other Project Approval will not limit the Vested Elements during the DA Term. Developer will have the right to seek and obtain Later Approvals at any time during the DA Term.

(f) Later Approvals.

(i) Each Later Approval, once granted and final, will be deemed to be a Project Approval that is automatically incorporated in, governed by, and vested under this Development Agreement.

(ii) Subject to **Subsection 5.2(f)** (Subdivision Code and Map Act), **Subsection 5.3(e)** (Circumstances Not Causing Conflict), and **Section 5.6**

(Exceptions), this Development Agreement will prevail over any conflict with a Later Approval or amendment to a Project Approval, unless the Parties agree otherwise.

5.2. Existing City Laws.

(a) Agreement to Follow Existing Policy.

(i) Except as expressly provided in this Development Agreement or other Transaction Documents, during the DA Term and to the extent that the City then has jurisdiction over Later Approvals, the City will process, consider, and review all Later Approvals in accordance with the following (collectively the "**DA Requirements**"):

(1) the Project Approvals;

(2) the Transaction Documents; and

(3) all applicable Existing City Laws, subject to **Section 5.3** (New City Laws).

(ii) The City agrees not to exercise its discretionary authority as to any application for a Later Approval in a manner that would change the policy decisions reflected in the DA Requirements or otherwise prevent or delay development of the Project as approved, subject to **Subsection 5.1(b)** (Effect of Final EIR).

(b) Chapter 56. The text of Chapter 56 on the Reference Date is attached as **DA Exhibit D**. Chapter 56, as amended by the DA Ordinance for the Project, is an Existing City Law under this Development Agreement that will prevail over any conflicting amendments to Chapter 56 unless Developer elects otherwise under **Subsection 5.3(c)** (Developer Election).

(c) TDM Plan.

(i) In Section 169, the Board of Supervisors has expressed a strong preference that development agreements should include similar provisions that meet the goals of the TDM Program. (Planning Code § 169.1(h))

(ii) Mitigation Measure M-AQ-2.3 requires a Transportation Demand Management (TDM) Plan with a goal of reducing estimated one-way vehicle trips by 20% compared to the total number of one-way vehicle trips identified in the project's Transportation Impact Study at project build-out.

(iii) Developer's TDM Plan is a Developer Construction Obligation under the DDA (*TP Schedule 2 to DDA Exh B7*). The TDM Plan meets the requirements of Mitigation Measure M-AQ-2.3 and incorporates many of the strategies described in Section 169.

(iv) The City has determined that the TDM Plan will meet or exceed the goals under Section 169. Accordingly, as stated in the DA Ordinance, the Project and Project Site will be exempt from separately complying with Section 169, as long as Developer implements and complies with the TDM Plan for the required compliance period.

(v) The Zoning Administrator will arrange for the Assessor-Recorder to record a notice of the TDM Plan in accordance with Planning Code section 169.4(e).

(d) Construction Codes. Nothing in this Development Agreement will preclude the City or the Port from applying then-current Construction Codes applicable to Horizontal Improvements and Vertical Improvements as a condition to issuing any construction permit at the Project Site.

(e) Utility Infrastructure Improvements Code.

(i) Nothing in this Development Agreement will preclude the City or the Port from applying to the Project Site then-current City Laws for Utility Infrastructure for each Phase, so long as:

(1) the standards for Utility Infrastructure are in effect, applicable citywide, and imposed on the Project concurrently with the applicable Phase Approval;

(2) the standards for Utility Infrastructure as applied to the applicable Phase are compatible with and would not require the retrofit, removal, supplementation, or reconstruction of Horizontal Improvements approved or constructed in Prior Phases; and

(3) if the standards for Utility Infrastructure deviate from those applied in Prior Phases, the deviations would not cause a Material Cost Increase.

(ii) If Developer or any Vertical Developer constructing Deferred Utility Infrastructure claims a Material Cost Increase has occurred or would occur, it will submit to the City reasonable documentation of its claim, such as bids, cost estimates, or other supporting documentation reasonably acceptable to the City, comparing costs (or estimates if not yet constructed) for any applicable Components of Utility Infrastructure in a Prior Phase, Indexed to the date of submittal, to cost estimates to construct the applicable Components in the current Phase, if the then-current standards for Utility Infrastructure in the Phase for the Utility Infrastructure were to be applied.

(iii) If the Parties are unable to agree on whether the application of then-current standards for Utility Infrastructure would cause Developer or the Vertical Developer to incur a Material Cost Increase, the Parties will submit the matter to dispute resolution procedures as described in *DDA art. 9 (Resolution of Certain Disputes).*

(f) Subdivision Code and Map Act.

(i) The DDA authorizes Developer to file Subdivision Map applications to subdivide, reconfigure, or merge parcels in the Project Site as necessary or desirable to develop the Project. This Development Agreement does not:

(1) relieve Developer of the requirement to file Subdivision Map applications when required to obtain Later Approvals from Public Works;

(2) authorize Developer to subdivide or use any part of the Project Site for any purpose that conflicts with the Map Act or with the Subdivision Code;

(3) prevent the City from applying procedural changes for processing Subdivision Maps that do not conflict with Project Approvals; or

(4) limit the Board of Supervisors' discretionary authority to consider, consistent with the DA Requirements, any appeal of a Later Approval for any Subdivision Maps that Developer submits for the Project Site.

(ii) The Parties acknowledge that the Port, in its proprietary capacity as land owner of the Project Site, will:

(1) approve any modifications to the specific boundaries that Developer proposes for Development Parcels (subject to Planning Code section 291); and

(2) execute all Final Maps for the Project Site.

5.3. New City Laws.

(a) Applicability. All New City Laws will apply to the Project and the Project Site except to the extent that they conflict with the DA Requirements. In the event of any conflict between a New City Law and the DA Requirements, the DA Requirements will prevail, subject to **Subsection 5.3(e)** (Circumstances Not Causing Conflict) and **Section 5.6** (Exceptions).

(b) Circumstances Causing Conflict. Any New City Law will be deemed to conflict with the DA Requirements and be a Material Change if the change would:

(i) revise the DA Term;

(ii) impede or delay the timely implementation of the Project in accordance with the DA Requirements, including:

(1) Developer's rights and obligations under the Financing Plan and the Acquisition Agreement; and

(2) the rate, timing, phasing, or sequencing of Site Preparation or construction of Horizontal Improvements for the Project Site;

(iii) limit or reduce:

(1) the density or intensity of uses of the Project or permitted under the DA Requirements on any part of the Project Site;

(2) the square footage, number, or change the location of proposed Vertical Improvements; or

(3) change any Horizontal Improvement from that permitted for the Project under the DA Requirements;

(iv) limit or change the height or bulk of any part of the Project, or otherwise require any reduction in the height or bulk of individual proposed Vertical Improvements from that permitted under the DA Requirements;

(v) limit or change the location of vehicular access or parking or the number and location of parking or loading spaces at the Project Site from that permitted under the DA Requirements;

(vi) limit or change any land uses for the Project from those permitted under the DA Requirements;

(vii) limit or change the Project Approvals or Transaction Documents;

(viii) decrease the Associated Public Benefits required under this Development Agreement, reduce the Impact Fees and Exactions or otherwise materially alter the rights, benefits or obligations of the City under this Development Agreement;

(ix) require the City or the Port to issue Later Approvals other than those required under DA Requirements, except as otherwise provided in **Section 5.4** (Fees and Exactions);

(x) limit, change, or control the availability of public utilities, services, or facilities or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the DA Requirements;

(xi) materially and adversely limit the processing of applications for or procuring of Later Approvals that are consistent with the Project Approvals;

(xii) increase or impose any new Impact Fees or Exactions for the Project, except as permitted under **Section 5.4** (Fees and Exactions);

(xiii) preclude Developer's or any Vertical Developer's performance of or compliance with DA Requirements or result in a Material Cost Increase to the Project for Developer or any Vertical Developer;

(xiv) increase the contracting and employment obligations of Developer, any Vertical Developer, or their contractors or subtenants above those in the Workforce Development Plan; or

(xv) require amendments or revisions to the forms of Vertical DDA or Parcel Lease, or to the Other City Requirements, except as set forth in **Subsection 5.3(e)** (Circumstances Not Causing Conflict).

(c) Non-City Standard Horizontal Improvements. The limitations in **clause (ii)** and **clause (iii)** of **Subsection 5.3(b)** (Circumstances Causing Conflict) must not be interpreted to deem the City's and Port's Later Approvals of final design for non-City standard Horizontal Improvements, as identified in the Infrastructure Plan, to be a conflict with the Project Approvals and the Transaction Documents or be a Material Change under **Subsection 5.3(b)** (Circumstances Causing Conflict).

(d) Developer Election.

(i) Developer may elect to have a New City Law that conflicts with the DA Requirements applied to the Project by giving the City notice of Developer's election. Developer's election notice will cause the New City Law to be deemed to be an Existing City Law.

(ii) If the application of the New City Law would cause a Material Change to the City's rights or obligations under this Development Agreement, the application of such New City Laws will require the concurrence of the affected City Agencies. In no event will Developer be entitled to elect the application of a New City Law to the Project that would:

(1) decrease the Associated Public Benefits required under this Development Agreement, reduce the Impact Fees and Exactions, or otherwise materially alter the rights, benefits, or obligations of the City under this Development Agreement; or

(2) require the City or the Port to issue Later Approvals other than those required under the DA Requirements, except as otherwise provided in **Section 5.4** (Fees and Exactions);

(iii) Nothing in this Development Agreement will preclude:

(1) the City from applying any New City Law to any development that is not a part of the Project; or

(2) Developer from challenging the application of any New City Laws to any part of the Project.

(e) Circumstances Not Causing Conflict. The Parties expressly agree that the Port will be entitled to amend the forms approved at Project Approval and update the Other City Requirements to incorporate a Change to Existing City Laws if:

(i) the Change to Existing City Laws is related to building or reconstructing the seawall, protecting Port property from or adapting Port property to sea level rise, or environmental protection measures that are directly related to the waterfront location of the Project; and

(ii) the Change to Existing City Laws would not:

(1) result in a Material Cost Increase to the construction or operation of Vertical Improvements; or

(2) impose City remedies and penalties that could result in the termination, loss, or impairment of a Vertical Developer's rights under its Vertical DDA or Parcel Lease or debarment from future contract opportunities with the City due to the Vertical Developer's or its subtenant's noncompliance with the Change to Existing City Laws.

(f) Port Role. The Port does not have the authority to approve a New City Law that is solely an exercise of the City's police powers, with or without Developer's consent under this Section. The City will obtain the Port's concurrence before applying

any New City Law to the Project Site or other land under Port jurisdiction that does not have citywide application.

5.4. Fees and Exactions.

(a) Generally.

(i) The Project will be subject only to the Impact Fees and Exactions and Administrative Fees listed in this Section. The City will not impose any new Administrative Fees, Impact Fees, or Exactions on the Project or impose new conditions or requirements for the right to develop the Project Site except as set forth in the Transaction Documents.

(ii) The Parties acknowledge that the provisions contained in this Section are intended to implement their intent that:

(1) Developer will have the right to develop the Project in accordance with specified and known criteria and rules; and

(2) the City will receive benefits from the Project Site's development without abridging the City's right to exercise its powers, duties, and obligations, except as specifically provided in this Development Agreement.

(iii) Developer acknowledges that:

(1) this Section does not limit the City's discretion if Developer requests changes under *DDA § 3.8 (Changes to Phase)* or *DDA § 3.9 (Changes to Project)*; and

(2) the Chief Harbor Engineer may require proof of payment of applicable Impact Fees then due and payable as a condition to issuing certain construction permits.

(b) Impact Fees and Exactions. Developer (or Vertical Developers as applicable) will satisfy the following Exactions and pay the following Impact Fees for the Project.

(i) Transportation Fee.

(1) Each Vertical DDA for a nonresidential use will require the Vertical Developer to pay a site-specific Transportation Fee as provided in the Transportation Exhibit *(DDA Exh B7)*, a copy of which is attached to the SFPUC Consent. In light of this requirement, the Transit Impact Fee under Planning Code sections 411.1-411.9 and the Transportation Sustainability Fee under Planning Code sections 411A.1-411A.8 will apply to the Project only as specified in the Transportation Exhibit. .

(2) The Transportation Exhibit describes:

(A) the manner in which the Vertical Developer will pay the Transportation Fee;

(B) transportation projects in the vicinity of the Project Site that are eligible uses for Transportation Fees; and

(C) procedures that SFMTA will use to allocate an amount equal to or greater than the Total Fee Amount for eligible transportation projects.

(3) The Transportation Fee payable will be equal to the Transportation Sustainability Fee listed on the current San Francisco Citywide Development Impact Fee Register for the same land use category with annual escalation in accordance with the methodology currently provided in Section 409 to the date that the Port issues the first construction permit for the applicable Vertical Improvement. For example, the Transportation Sustainability Fee in 2017 for residential buildings with up to 99 units is $8.13/gsf, and $9.18/gsf of residential use in all dwelling units at and above the 100th unit in the building.

(ii) Jobs/Housing Equivalency Fee.

(1) Each Vertical DDA for a nonresidential use will require the Vertical Developer to pay to the Port the "**Jobs/Housing Equivalency Fee**" described in this Section. In consideration of these payments, the City has waived the Jobs/Housing Linkage Fee for the Project. Port will administer and use the Jobs/Housing Equivalency Fee for purposes specified in the Housing Plan in consultation with MOHCD.

(2) The Jobs/Housing Equivalency Fee listed on the current San Francisco Citywide Development Impact Fee Register for the same land use category, with annual escalation in accordance with the methodology currently provided in Section 409 to the date that the Port issues the first construction permit for each Vertical Improvement. For example, the Jobs/Housing Equivalency Fee for net additional gsf of office use is $25.49/gsf for calendar year 2017.

(3) Developer's Phase Submittal will include an estimate of the Jobs/Housing Equivalency Fee payable for each Commercial Parcel and each Flex Parcel expected to be developed for commercial use. Through the Phase Budget process, the Port and Developer will establish the minimum Jobs/Housing Equivalency Fee payable for those parcels, even if the use of the designated parcels later changes.

(iii) Affordable Housing. Residential development on the Project Site will comply with the Housing Plan. In light of these requirements, Planning Code sections 415.1–415.11 will not apply to the Project.

(iv) Child Care. Each VDDA for a nonresidential use will require the Vertical Developer to pay to the Port the "**Childcare Equivalency Fee**" described in this clause. In light of this requirement, the City has waived the application of the Child Care Fee under Planning Code sections 414.1–414.15 and sections 414A.1–414A.8 to the Project.

(1) The Child Care Equivalency Fee will be $1.57 per gsf, with annual escalation in accordance with the methodology currently provided

in Section 409 to the date that the Port issues the first construction permit for the applicable Vertical Improvement.

(2) The Child Care Equivalency Fee will be used to assist one or more Vertical Developers or their tenants to provide childcare facilities within the Project generally consistent with the purposes and intent of on-site options for commercial buildings under Planning Code section 414. Any fees collected by the Port and not used within the Project upon completion of the Project will be paid by the Port to the City's Child Care Capital Fund.

(v) Public Art. Under the DDA, public art will be provided as part of the Horizontal Improvements as described in the Design Controls. Accordingly, no Exaction or Impact Fee related to public art is required.

(vi) School Facilities Fees. Each Vertical Developer will pay the school facilities Impact Fees imposed under state law (Educ. Code §§ 17620-17626, Gov't Code §§ 65970-65981, & Gov't Code §§ 65995-65998) at the rates in effect at the time of assessment.

(vii) Community Facilities. Developer may offer through a Phase Submittal, or the City may request during a Phase Submittal review process, to include in one or more Phases up to a Project-wide total of 15,000 gsf of space for community facilities consistent with the requirements of *DDA § ___ (Community Facilities)*. Developer, in its sole discretion, may designate the location of any community facility space, which may be distributed among two or more buildings.

(c) Utility Fees.

(i) SFPUC Wastewater Capacity Charge. Each Vertical Developer will pay the SFPUC Wastewater Capacity Charge in effect on the connection or other applicable date specified by SFPUC, subject to appropriate adjustment if the Project includes a District System.

(ii) SFPUC Water Capacity Charge. Each Vertical Developer will pay the SFPUC Water Capacity Charge in effect on the connection or other applicable date specified by SFPUC.

(iii) AWSS. Developer will make a fair share contribution to the City's auxiliary water supply system (AWSS) consistent with the Infrastructure Plan. The City will determine the timing and procedures for payment consistent with the AWSS requirements of the Infrastructure Plan as a condition of approval to the Tentative Map for the Project.

(d) Administrative Fees Generally. Developer will timely pay the City all Administrative Fees when due. Administrative Fees for the Project will be limited to the Administrative Fees in effect on a citywide basis when Developer applies for any Later Approval for which the fee is payable. Administrative Fees are not Other City Costs.

(e) Administrative Fees for Environmental Review. If further environmental review is required for a Later Approval, Developer will reimburse the City or pay directly

all reasonable and actual costs to hire consultants and perform studies necessary for the review. The City will make final decisions regarding the following matters, but before engaging any consultant or authorizing related expenditures under this provision, will consult with Developer in an effort to agree to:

(i) the scope of work to be performed;

(ii) the projected costs associated with the work; and

(iii) the particular consultant that would be engaged to perform the work.

5.5. Limitations on City's Future Discretion.

(a) Extent of Limitation. In accordance with **Section 5.3** (New City Laws), the City in granting the Project Approvals and, as applicable, vesting the Project through this Development Agreement is limiting its future discretion with respect to the Project and Later Approvals to the extent that they are consistent with DA Requirements. For elements included in a request for a Later Approval that have not been reviewed or considered by the applicable City Agency previously (including additional details or plans for Horizontal Improvements or Vertical Improvements), the reviewing City Agency will exercise its discretion consistent with the Planning Code section 249.80, the other DA Requirements, and otherwise in accordance with customary practice and *App ¶ 3.3 (Good Faith and Fair Dealing).*

(b) Consistency with Prior Approvals. In no event will a City Agency deny issuance of a Later Approval based upon items that are consistent with the DA Requirements and matters previously approved. Consequently, the City will not use its discretionary authority to change the policy decisions reflected by the DA Requirements, or to deny a Later Approval based on items that are consistent with the DA Requirements and previously approved Later Approvals.

(c) Matters Not Limited. Nothing in this Development Agreement will limit the City's discretion with respect to:

(i) any proposed Later Approval that would be a Material Change; or

(ii) the Board of Supervisors' approvals of Subdivision Maps, as required by law, not contemplated by the Project Approvals.

(d) ICA. Although the Planning Department is not a signatory or consenting party to the ICA, the Planning Commission is familiar with its contents and agrees that Planning will comply with the ICA to the extent applicable to Planning.

5.6. Exceptions.

(a) City's Exceptions. Each City Agency having jurisdiction over the Project has police power authority to exercise its discretion with respect to Later Approvals in a manner that is consistent with the public health, safety, and welfare and take any action that is:

(i) necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**"); or

(ii) reasonably calculated and narrowly drawn to comply with applicable changes in federal or state law affecting the physical environment (the "**Federal or State Law Exception**").

(b) Application of Exceptions. A City Agency will have the authority to condition or deny a Later Approval or to adopt a New City Law applicable to the Project so long as the condition, denial, or New City Law is:

(i) limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public or required to comply with a federal or state law and in each case not for independent discretionary policy reasons that are inconsistent with the DA Requirements; and

(ii) in either case applicable citywide or portwide, as applicable, to the same or similarly situated uses and applied in an equitable and nondiscriminatory manner.

(c) Amendments to Comply with Federal or State Law Changes. If a change in federal or state law that becomes effective after the Reference Date materially and adversely affects either Party's rights, benefits, or obligations under this Development Agreement, or would preclude or prevent either Party's compliance with any provision of the DA Requirements to which it is a Party, the Parties may agree to amend this Development Agreement. Any amendment under this Subsection will be limited to the extent necessary to comply with the law, subject to **Subsection 5.6(a)** (City's Exceptions), **Subsection 5.6(b)** (Application of Exceptions), and **Section 10.1** (Amendment).

(d) Meet and Confer; Right to Dispute.

(i) City retains sole discretion with regard to the adoption of any New City Laws that fall within the Public Health and Safety Exception. Except for emergency measures, however, the City will meet and confer with Developer before taking action under such exception to the extent feasible.

(ii) Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on the dispute following a reasonable meet and confer period, then Developer or the City can seek a judicial relief with respect to the matter.

5.7. Other Exceptions

(a) Changes to DA Statute. The Parties have entered into this Development Agreement in reliance on the DA Statute in effect on the Reference Date, a copy of which is attached as **DA Exhibit D**. Any amendment to the DA Statute that would affect the interpretation or enforceability of this Development Agreement or increase either Party's obligations, diminish Developer's development rights, or diminish the City's benefits will not apply to this Development Agreement unless specifically required by law or a final judgment.

(b) Adverse Effect on Project. If adoption of any New City Law that falls within the Public Health and Safety Exception or the Federal or State Law Exception

would cause a Material Change that would cause a Material Cost Increase or would cause a material and adverse effects on construction, development, use, operation, or occupancy, or impede the delivery of or decrease the Associated Public Benefits of the Project under the DA Requirements to render the Project economically infeasible, then the following will apply.

(i) Either Developer or the Port may deliver a Requested Change Notice to the other (with a copy to the City) under *DDA § 3.9 (Changes to Project)*. The notice will initiate a 90-day meet-and-confer period, subject to extension by agreement, during which Developer's obligations under this Development Agreement will be tolled except to the extent that the City, the Port, and Developer expressly agree otherwise.

(ii) If the Port and Developer agree on amendments to the Transaction Documents (or other solutions) that would maintain the benefit of the bargain during the negotiation period under *DDA § 3.9 (Changes to Project)*, the City will reasonably consider conforming changes to this Development Agreement and other Project Approvals if required. If the Port and Developer cannot resolve the issue during the 90-day period, then they will engage in nonbinding arbitration under *DDA § 9.5 (Nonbinding Arbitration)*.

(iii) If the matter remains unresolved, then either Developer or the City may terminate this Development Agreement on 30 days' prior notice to the other Party. If the Port exercises its termination right under *DDA §3.9(e) (Failure to Agree or Approve)* or *DDA § 11.4 (Termination as Remedy)* as to any portion of the Project Site, then this Development Agreement will terminate to the same extent, as specified in **Section 2.2** (DA Term).

(iv) The obligation to provide Associated Public Benefits tied to any Development Parcel for which the Port has issued a construction permit and the Vertical Developer has begun construction of the Vertical Improvement will survive termination under this Subsection.

5.8. Future City Approvals.

(a) Later Approvals.

(i) City Agencies will process any Later Approval requiring City action in accordance with this Development Agreement (including Existing City Law), the ICA, the DDA, and this Section, as applicable, with due diligence.

(ii) Acquiring Agencies will process and approve amendments to the Infrastructure Plan (*DDA Exh B3*) and the Transportation Exhibit (*DDA Exh B7*) in accordance with the DDA and the *ICA art. 9 (Amendments to ICA, Infrastructure Plan and Transportation Plan)*, subject to limitations imposed by this Development Agreement.

(b) Office Development.

(i) An Office Development Authorization from the Planning Commission under Planning Code sections 321 and 322 is not required for new office development on land under the jurisdiction of the Port Commission. But

new office development on land under the jurisdiction of the Port Commission will count against the annual maximum limit under Planning Code section 321.

(ii) For the purposes of the Project, the amount of office development located on the Project Site to be applied against the annual maximum set in Planning Code section 321(a)(1) will be based on the approved building drawings for each office development. To provide for the orderly development of new office space citywide, office development for the Project will be subject to the schedule and criteria described in *DDA Exh A4 (Provisions for Office Development)*.

(c) No Actions to Impede. Except to the extent required under **Section 5.6** (Exceptions), the City will not take any action under this Development Agreement or impose any condition on the Project that would conflict with the DA Requirements due to any of the circumstances identified in **Subsection 5.3(b)** (Circumstances Causing Conflict).

(d) Standard of Review Generally. City Agencies:

(i) will not disapprove any application for a Later Approval based on any item or element that is consistent with the DA Requirements;

(ii) will consider each application for a Later Approval in accordance with its customary practices, subject to the requirements of the DA Requirements and the ICA;

(iii) may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with the Regulatory Requirements; and

(iv) in no event will be obligated to approve an application for a Later Approval that would effect a Material Change.

(e) Denial. Any City Agency that denies an application for a Later Approval will specify in writing the reasons for denial and suggest modifications required for approval, consistent with the DA Requirements. The City Agency will approve a revised or re-submitted application if it:

(i) corrects or mitigates the stated reasons for the earlier denial in a manner that is consistent and compliant with the DA Requirements; and

(ii) does not include new or additional information that does not meet the DA Requirements.

(f) SFPUC Power.

(i) In accordance with Administrative Code chapter 99, the SFPUC has performed a feasibility study and has determined that it will be able to provide electric power to the Project. SFPUC agrees that applicable SFPUC service will be reasonably available to meet the Project's needs and Developer's schedule, and that the projected price for applicable SFPUC service and related Utility Infrastructure cost allocations are comparable to rates in San Francisco for comparable service. SFPUC will work with Developer to provide applicable

SFPUC service for temporary construction and permanent use pursuant to SFPUC *Rules and Regulations for Electric Service*.

(ii) Developer understands and agrees that all applicable SFPUC service for the Project Site will be provided by SFPUC Power under the terms of an ESA to be completed between SFPUC Power and Developer. Among other things, the ESA, in addition to the ESA's standard terms and conditions, will address some or all of the following:

(1) development schedules and milestones for applicable SFPUC service;

(2) termination rights and costs;

(3) offsite Utility Infrastructure requirements, development, costs, and any cost allocation;

(4) onsite Utility Infrastructure requirements, development, costs, and cost allocations; and

(5) Developer-provided space for SFPUC electric facilities.

(iii) The Parties agree to act in good faith to finalize the ESA within 180 days after the Reference Date. If the Parties' good faith efforts do not result in a final ESA within 180 days, the Parties will agree to a reasonable extension of time to complete the ESA. If the Parties' diligent good faith negotiations to enter into an ESA as set forth above are unsuccessful, Developer may elect to pursue alternative service arrangements.

(g) Parks Plan. The Mission Rock Public Spaces will be designed and operated with the primary goals of broad public access and a robust program of public activation. The City and Developer have agreed preliminarily on limitations that will apply to Public Spaces at the Project Site, subject to refinements adopted by the Port Commission. No later than its approval of the Phase 1 Budget, the Port Commission will adopt a Parks Plan that will include at least the following:

(i) a proposed parks management entity responsible for maintenance, security, management, operations, programming, concessions, leasing, revenue development, and general activation of the Public Spaces, which may be a nonprofit, Associated Public Benefits district, community facility district, master association, or a City Agency;

(ii) operating budget, organization chart, operational plan, procedures and guidelines for permitting public events, maintenance plan, funding plan, security strategy, park rules and regulations, and any other information related to the successful management of the Public Space; and

(iii) programming, activation plan, and special events plan that encourage programmed events and activities that are free and open to the public while placing limitations on the number, type, and duration of events that may occur in each park per year.

(h) Limitations on Events. The Port Commission will adopt a Parks Plan limiting events in Public Spaces substantially in accordance with this Subsection.

(i) Events with a footprint larger than 10,000 square feet are generally limited in duration to 10 consecutive days, including setup and breakdown. The Port Director may grant exemptions for seasonal and periodic attractions or amusements that provide public or cultural benefits, such as ice skating rinks, holiday fairs, rides, and art installations.

(ii) Unless the Port Director grants an exemption in the public interest, the number and type of permitted annual events per Public Space are limited as follows:

(1) Free Public Events:

(A) unlimited Event Days of Small Events;

(B) up to 100 Event Days of Medium Events at China Basin Park not to exceed four weekend days per month; and

(C) up to 100 Event Days of Medium or Large Events at Mission Rock Square not to exceed six weekend days per month.

(2) Ticketed Public Events: 24 Event Days per year per Public Space of the 100 Event Days of free Medium Event Days at China Basin Park and 100 Free Medium Event Days at Mission Rock Square.

(3) Promotional Activations: a cumulative maximum of 5,000 square feet per year, in no more than four locations within a Public Space can occur up to 50 Event Days per year; and

(4) Private Events: a maximum of 18 Event Days per year of Small Events or Medium Events.

(5) No more than two unrelated Small Events that collectively occupy more than 10,000 square feet will be permitted to occur simultaneously in a Public Space.

(iii) The Port permitting process will:

(1) be streamlined and provide for annual permits for certain categories of events;

(2) to the extent feasible under Port regulations and BCDC permit requirements, require continuous public access to all Public Spaces, including the Bay Trail;

(iv) provide access for public group or individual reservations and City programming or activities such as Recreation and Parks Department camps and group gatherings, a public means of reserving amenities such as ballfields, picnic tables and other areas which may be reserved within the

Public Spaces through Port or Recreation and Parks Department reservation system, and a mechanism for city departments to advertise their programs;

(v) be consistent with applicable regulations for amplified sound; and

(vi) to the extent applicable, be consistent with Mission Rock Workforce Plan requirements.

(i) Public ROWs.

(i) The Parties will prepare and adopt the Mission Rock Event Management Plan to manage on-site event related travel and ensure street safety. The implementation of the Transportation Plan (and the Mission Rock Event Management Plan) will include Later Approvals, such as street closures of the Shared Public Way and a portion of Exposition Street to vehicular traffic in connection with identified events. Street closures will be subject to ISCOTT or any superseding permitting procedures for street closures as applicable.

(ii) Developer and Vertical Developers may submit one or more annual street closure permit applications to the City for any set of street closures involving consistent uses and event management strategies.

(iii) Developer acknowledges that:

(1) the right to use Public ROWs is not exclusive and that the City or Port may issue permits to other persons for use and occupancy, including events, with or without the consent of Developer; and

(2) the Port and City will require licensees to cover the costs of maintenance and operation attributable to any use or occupancy as a condition to issuing use permits.

5.9. Public Financing.

(a) Financing Districts. The Project Approvals include formation of Sub-Project Areas I-1 through I-13. Later Approvals will include the formation of the CFDs as described in the Financing Plan. The City agrees not to:

(i) initiate proceedings for any new or increased special tax or special assessment that is targeted or directed at the Project Site except as provided in the Financing Plan; or

(ii) take any other action that would impede implementation of the Financing Plan or the Tax Allocation MOU without Developer's consent.

(b) Limitation on New Districts. The City will not form any new financing or assessment district over any portion of the Project Site unless the new district applies to similarly-situated property citywide or Developer consents to or requests the proceedings.

(c) Permitted Assessments. Nothing in this Development Agreement limits the City's ability to impose new or increased taxes or special assessments, any equivalent or substitute tax or assessment, or assessments for the benefit of districts formed by a vote of the affected property owners.

6. NO DEVELOPMENT OBLIGATION

This Development Agreement does not obligate Developer to begin or complete development of any portion of the Project or impose a schedule or a phasing plan for Developer to start or complete development. But the Parties have entered into this Development Agreement as one of the Transaction Documents that implements the DDA, which includes a Phasing Plan, a Schedule of Performance, and other conditions to development of the Project. The Parties have entered into this Development Agreement, and the Port and Developer have agreed to the schedule and phasing as described in the DDA with the express intent of avoiding a result similar to that in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465.

7. MUTUAL OBLIGATIONS

7.1. Standards of Conduct.

(a) Generally. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with pertinent provisions in this Development Agreement and *Appendix Part A (Standard Provisions and Rules of Interpretation),* Project Approvals (including Later Approvals), the ICA, and this Development Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Project Approvals and this Development Agreement are implemented. Nothing in this Development Agreement obligates the City to incur any costs except costs that Developer will reimburse through the payment of Administrative Fees, Other City Costs, or otherwise.

(b) Standards in DDA. In addition, the Parties expressly agree that *DDA § 5.5(a) (Covenant of Good Faith and Fair Dealing), DDA § 5.5(b) (Cooperation and Non-Interference), DDA § 5.5(c) (Commercial Reasonableness),* and *DDA § 5.5(e) (Specificity of Approval)* apply to this Development Agreement, and references in those sections to the DDA will be interpreted to be similarly applicable to their actions under this Development Agreement.

(c) City.

(i) Through the procedures in the DDA and the ICA, the Port and the City have agreed to process Developer's applications for horizontal development diligently and to facilitate an orderly, efficient approval process that avoids delay and redundancies. Section 279.80 specifies procedures for design review of vertical development, with reference to the Design Controls.

(ii) The Port and the City, acting through the Treasurer-Tax Collector and the Controller, have entered into the Tax Allocation MOU, which establishes procedures to implement provisions of the Financing Documents that apply to future levy, collection, and allocation of Mello-Roos Taxes and Tax Increment and to the issuance of Bonds for use at the Project Site.

(d) Developer. Developer agrees to provide all documents, applications, plans, and other information necessary for the City to comply with its obligations under the Transaction Documents as reasonably requested in connection with any Developer submittal or application, consistent with the design review process for vertical development in Section 279.80 and for horizontal development in the DDA and the ICA.

7.2. Other Regulators. The Port's obligations with respect to Other Regulatory Approvals that Developer and Vertical Developers will obtain for Horizontal Improvements and Vertical Improvements are addressed in *DDA § 14.4 (Regulatory Approvals)* and *VDDA §§ 5.3 & 12.9 (Regulatory Approvals)*, respectively.

7.3. Third-Party Challenge.

(a) Effect. A Third Party Challenge will not delay or stop the development, processing, or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order enjoining the activity.

(b) Cooperation in Defense. The Parties agree to cooperate in defending any Third-Party Challenge to the validity or performance by any person in furtherance of the Project Approvals or Later Approvals. The City will notify Developer promptly after being served with any Third-Party Challenge filed against the City.

(c) Developer Cooperation. Developer at its own expense will assist and cooperate with the City in connection with any Third-Party Challenge. The City Attorney in his sole discretion may use legal staff of the Office of the City Attorney with or without the assistance of outside counsel in connection with defense of the Third-Party Challenge.

(d) Cost Recovery. Developer will reimburse the City for its actual defense costs, including the fees and costs of legal staff and any consultants. Subject to further agreement, the City will provide Developer with monthly invoices for all of the City's defense costs.

(e) Developer's Termination Option.

(i) Developer may elect to terminate this Development Agreement (and the DDA under *DDA § 11.5 (Mutual Termination Right))* by delivering a notice to the City, with a copy to the Port, specifying a termination date at least 10 days after the notice at any time after a Third-Party Challenge is filed or a final judgment is entered limiting Developer's right to proceed with the Project under the DDA.

(ii) If Developer elects to terminate, the Parties will promptly cooperate to file a request for dismissal. Developer's and the City's obligations to cooperate in defending the Third-Party Challenge, and Developer's responsibility to reimburse the City's defense costs, will end on the Termination Date. But Developer must indemnify the City from any other liability caused by the Third-Party Challenge, including any award of attorneys' fees or costs.

(f) Survival. The indemnification, reimbursement, and cooperation obligations under this Section will survive termination under **Subsection 7.3(e)** (Developer's Termination Option) or any judgment invalidating any part of this Development Agreement.

7.4. Estoppel Certificates.

(a) Contents. Either Party may ask the other Party to sign an estoppel certificate to the best of its actual knowledge after reasonable inquiry as to the following matters:

(i) This Development Agreement is in full force and effect as a binding obligation of the Parties.

(ii) This Development Agreement has not been amended, or if amended, identifying the amendments or modifications and stating their date and nature.

(iii) The requesting Party is not in default in the performance of its obligations under this Development Agreement, or is in default in the manner specified.

(iv) The City's findings in the most recent Annual Review under **Article 8** (Periodic Compliance Review).

(b) Response Period. A Party receiving a request under this Section will execute and return the completed estoppel certificate within 30 days after receiving the request. A Party's failure to either execute and return the completed estoppel certificate or provide a detailed written explanation for its failure to do so will be a DA Default following notice and opportunity to cure under **Section 9.1** (Meet and Confer).

(c) Reliance. Each Party acknowledges that Interested Persons may rely on an estoppel certificate provided under this Section. At an Interested Person's request, the City will provide an estoppel certificate in recordable form, which the Interested Person may record in the Official Records at its own expense.

(d) Cooperation to Obtain Other Regulatory Approvals. Certain portions of the Project may require Other Regulatory Approvals. The City will reasonably cooperate with requests by Developer in connection with Developer's efforts to obtain Other Regulatory Approvals necessary or desirable for the Project.

8. PERIODIC COMPLIANCE REVIEW

8.1. Initiation or Waiver of Review.

(a) Statutory Provision. Under section 65865.1 of the DA Statute, the Planning Director will conduct annually a review of developers' good faith compliance with approved development agreements (each, an "**Annual Review**"). The Planning Director will follow the process set forth in this Article for each Annual Review.

(b) No Waiver. The City's failure to timely complete an Annual Review in any year during the DA Term will not waive the City's right to do so at a later date.

(c) Planning Director's Discretion. The DA Ordinance waives certain provisions of compliance review procedures specified in Chapter 56 and amends Chapter 56 to grant discretion to the Planning Director with respect to Annual Reviews as follows.

(i) For administrative convenience, the Planning Director may designate the annual date during the term of this Development Agreement when each Annual Review will begin (the "**Annual Review Date**").

(ii) The Planning Director may elect to forego an Annual Review for any of the following reasons: (1) before the designated Annual Review Date, Developer reports that no significant construction work occurred on the Project

Site during the reporting period; (2) either Developer or the Port has initiated procedures to terminate the DDA; or (3) the Planning Director otherwise decides an Annual Review is unnecessary.

8.2. Required Information from Developer.

(a) Contents of Report. At the time specified under **Subsection 8.1(c)** (Planning Director's Discretion), Developer will submit a letter to the Planning Director setting forth in reasonable detail the status of Developer's compliance with its obligations under **Article 4** (Developer's Obligations) and **Article 7** (Mutual Obligations). Developer will provide the requested letter within 60 days after each Annual Review Date, unless the Planning Director specifies otherwise. The letter to the Planning Director will attach appropriate supporting documentation, which may include an estoppel certificate from the Port in a form acceptable to the Port, the Planning Director, and Developer.

(b) Standard of Proof. An estoppel certificate from the Port, if submitted with Developer's letter, will be conclusive proof of Developer's compliance with specified obligations under the DDA and be binding on the City. Each Other City Agency responsible for monitoring and enforcing any part of Developer's compliance with the Vested Elements and its obligations under **Article 4** (Developer's Obligations) and **Article 7** (Mutual Obligations) must confirm Developer's compliance or provide the Planning Director with a statement specifying the details of noncompliance. Developer will have the burden of proof to demonstrate compliance by substantial evidence of matters not covered in the Port's estoppel certificate or any Other City Agency's letter.

8.3. City Review. The Annual Review will be limited to determining Developer's compliance with **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations) and whether a Prospective Default has occurred and is continuing.

8.4. Certificate of Compliance. Within 60 days after Developer submits its letter, the Planning Director will complete the review of the information submitted by Developer and all other available evidence of Developer's compliance with **Article 4** (Developer Obligations) and **Article 7** (Mutual Obligations). The Planning Director must provide copies to Developer of any evidence provided by sources other than Developer promptly after receipt. The Planning Director will summarize his determination as to each item in a letter to Developer. If the Planning Director finds Developer in compliance, then the Planning Director will follow the procedures in Administrative Code section 56.17(b).

8.5. Public Hearings. Planning will hold a public hearing under Administrative Code section 56.17(c) if: (a) the Planning Director finds that Developer is not in compliance or a public hearing is in the public interest; or (b) a member of the Planning Commission or the Board of Supervisors requests a public hearing on Developer's compliance.

8.6. Effect on Transferees. If Developer has Transferred its rights and obligations under the DDA and this Development Agreement: (a) each Transferee will provide a separate letter reporting compliance with its obligations; and (b) the procedures, rights, and remedies under this Article and Chapter 56 will apply separately to Developer and any Transferee, each only to the extent of and to obligations attaching to each Phase for which it is obligated. This requirement does not apply to Vertical Developers.

8.7. Notice and Cure Rights.

(a) Amended Rights. This Section reflects an amendment to Chapter 56 in the DA Ordinance that is binding on the Parties and all other persons affected by this Development Agreement regarding cure rights after a finding of noncompliance.

(b) Required Findings. If the Planning Commission makes a finding of noncompliance, or if the Board of Supervisors overrules a Planning Commission finding of compliance, in a public hearing under Administrative Code section 56.17(c), then the Planning Commission or the Board of Supervisors, as applicable, will specify in reasonable detail how Developer failed to comply and a reasonable time to cure its noncompliance.

(c) Cure Period. The Breaching Party will have a reasonable opportunity to cure its noncompliance. The cure period will not be less than 30 days and will in any case provide a reasonable amount of time for Developer to effect a cure. If Developer fails to effect a cure within the cure period under **Subsection 8.7(b)** (Required Findings) the City may begin proceedings to modify or terminate this Development Agreement under Administrative Code section 56.17(f) or section 56.18.

8.8. No Limitation on City's Rights After Event of Default. The City's rights and powers under this Article are in addition to, and do not limit, the City's rights to terminate or take other action under this Development Agreement after a DA Default by Developer.

9. DEFAULTS AND REMEDIES

9.1. Meet and Confer. Before sending a notice of default under **Section 9.2** (DA Defaults), the Aggrieved Party will follow the process in this Section.

(a) Good Faith Effort. The Aggrieved Party will make a written request that the Breaching Party meet and confer to discuss the alleged breach within three business days after the request is delivered. If, despite the Aggrieved Party's good faith efforts, the Parties have not met to confer within seven business days after the Aggrieved Party's request, the Aggrieved Party will be deemed to have satisfied the meet and confer requirement.

(b) Opportunity to Cure. If the Parties meet in response to the Aggrieved Party's request, the Aggrieved Party will allow a reasonable period of not less than 10 days for the Breaching Party to respond to or cure the alleged breach.

(c) Exclusions. The meet and confer requirement does not apply to a Breaching Party's failure to pay amounts when due under this Development Agreement or in circumstances where delaying the Aggrieved Party's right to send a notice of default under **Section 9.2** (DA Defaults) would impair prejudice or otherwise adversely affect the Aggrieved Party's rights under this Development Agreement.

9.2. DA Defaults.

(a) Specific Events. The occurrence of any of the following will be a "**DA Default**" under this Development Agreement.

(i) A Breaching Party fails to make any payment when due if not cured within 30 days after the Aggrieved Party delivers notice of nonpayment.

(ii) A Breaching Party fails to satisfy any other material obligation under this Development Agreement when required if not cured within 60 days after the Aggrieved Party delivers notice of noncompliance or if the breach cannot be cured within 60 days, the Breaching Party fails to take steps to cure the breach within the 60-day period and diligently complete the cure within a reasonable time.

(b) Notice. Any notice of default given by a Party will specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured, if at all.

(c) Certain Payment Defaults. Developer or the applicable Transferee will have a complete defense if the City alleges a DA Default in Developer's obligation to pay City Costs in the following circumstances.

(i) If Developer or the applicable Transferee made a payment to the Port that included the allegedly unpaid City Costs, but the Port failed to disburse the portion payable to the aggrieved City Agency.

(ii) If a City Agency claiming nonpayment did not submit a timely statement for reimbursement of the claimed City Costs under *ICA § 3.6 (Cost Recovery)*.

9.3. Remedies for DA Defaults.

(a) Specific Performance. After a DA Default under this Development Agreement, the Aggrieved Party may file an action and seek injunctive relief against or specific performance by the Breaching Party. Nothing in this Section requires an Aggrieved Party to delay seeking injunctive relief if it believes in good faith that postponement would cause it to suffer irreparable harm.

(b) Limited Damages. The Parties agree as follows.

(i) Monetary damages are an inappropriate remedy for any DA Default other than nonpayment under this Development Agreement.

(ii) The actual damages suffered by an Aggrieved Party under this Development Agreement for any DA Default other than nonpayment would be extremely difficult and impractical to fix or determine.

(iii) Remedies at law other than monetary damages and equitable remedies are particularly appropriate for any DA Default other than nonpayment under this Development Agreement. Except to the extent of actual damages, neither Party would have entered into this Development Agreement if it could be liable for consequential, punitive, or special damages under this Development Agreement.

(c) Material Breach under DDA. For any Material Breach that results in the termination of the DDA in whole or in part, the City's exclusive remedy under this Development Agreement will be automatic and concurrent termination under **Section 2.2** (DA Term).

(d) City Processing. The City may suspend action on any Developer requests for approval or take other actions under this Development Agreement during any period in which payments from Developer are past due.

(e) Associated Public Benefits. If Associated Public Benefits are not delivered when required, the City's remedies will be enforced through the Port's rights under the DDA, outlined below.

(i) Under *DDA § 14.6* (*SOP Compliance)*, the Port may withhold a determination that Developer has Finally Completed Phase Improvements that include Associated Public Benefits to be provided in a Phase.

(ii) The Port may declare Developer to be in Material Breach under *DDA § 11.2(h) (Material Breaches by Developer)* if Developer is found to be in noncompliance under **Article 8** (Periodic Compliance Review).

(iii) The Port may declare an event of default by a Vertical Developer under its Vertical DDA or Parcel Lease, as applicable, if it fails to meet the schedule for required delivery of an Associated Public Benefit after notice and an opportunity to cure.

9.4. New City Laws. Under section 65865.4 of the DA Statute, either Party may enforce this Development Agreement regardless of any New City Laws unless this Development Agreement has been terminated by agreement under **Article 10** (Amendment or Termination), by termination proceedings under Chapter 56, or by termination under **Section 2.2** (DA Term) or **Subsection 9.3(c)** (Material Breach under DDA).

10. AMENDMENT OR TERMINATION

10.1. Amendment. This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the DA Statute, or Chapter 56. The Port Commission, the Planning Commission, and the Board of Supervisors must all approve any amendment that would be a Material Change. Following an assignment, the City and Developer or any DA Successor may amend this Development Agreement as it affects Developer, the DA Successor, or the portion of the Project to which the rights and obligations were assigned without affecting other portions of the Project or other Vertical Developers and DA Successors. The Planning Director may agree to any amendment to this Development Agreement that is not a Material Change, subject to the prior approval of any City Agency that would be affected by the amendment.

10.2. Termination. This Development Agreement may be terminated in whole or in part by: (a) the Parties' agreement or as specifically provided otherwise in this Development Agreement, the DA Statute, or Chapter 56; or (b) by termination under **Section 2.2** (DA Term) or **Subsection 9.3(c)** (Material Breach under DDA).

10.3. Notice of Termination. At the request of either Party, the Parties will execute a recordable notice of the early termination of this Development Agreement as to any affected part of the Project Site. The requesting Party will be responsible for presenting the acknowledged notice for recordation in the Official Records.

11. TRANSFERS, CONVEYANCES, AND ENCUMBRANCES

11.1. DA Successors' Rights. Applicable provisions of this Development Agreement will apply to Developer's and a Vertical Developer's Transferees (each, a "**DA Successor**") under *DDA art. 6 (Transfers)* and *VDDA art. 19 (Transfers and Assignments)*. Each DA Successor will be assigned specified rights and obligations under the Development Agreement by an Assignment and Assumption Agreement in the form of *DDA Exh B10* or by provisions in the Vertical DDA (each, a "**DA Assignment**"). Each DA Assignment will be recorded in accordance with the DDA or Vertical DDA, as applicable. Each DA Assignment will provide for Developer or the pertinent Vertical Developer to be released from obligations under this Development Agreement to the extent assumed by the DA Successor.

11.2. Effect of Transfer or Assignment. After the effective date of a DA Assignment, the following will apply.

(a) Direct Enforcement Against Successor. The City will have the right to enforce directly against the DA Successor every obligation under this Development Agreement that the DA Successor assumed under the DA Assignment.

(b) Partial Developer Release. Developer will remain liable for obligations under this Development Agreement only to the extent that Developer retains liability under the applicable DA Assignment. Developer will be released from any prospective liability or obligation, and its DA Successor will be deemed to be subject to all future rights and obligations of Developer under this Development Agreement, to the extent set forth in the DA Assignment.

(c) Partial Vertical Developer Release. A Vertical Developer will be liable for obligations under this Development Agreement to the extent set forth in the applicable DA Assignment. A Vertical Developer will be released from any prospective liability or obligation, and its DA Successor will be deemed to be subject to all future rights and obligations of the Vertical Developer under this Development Agreement to the extent set forth in the applicable DA Assignment.

(d) No Cross-Default. A DA Default under this Development Agreement any Vertical DDA or any Parcel Lease or Ground Lease, as applicable, by any DA Successor (in each case, a "**Successor Default**") with respect to any part of the Project or Project Site will not be a DA Default by Developer with respect to any other part of the Project or Project Site. The occurrence of a Successor Default will not entitle the City to terminate or modify this Development Agreement with respect to any part of the Project or Project Site that is not the subject of the Successor Default.

11.3. Applicable Lender Protections Control Lender Rights.

(a) Rights to Encumber. Developer, Vertical Developers, and DA Successors have or will have the right to encumber their real property interests in and development rights at the Project Site and in their personal property interests in Developer or a Vertical Developer in accordance with the Applicable Lender Protections, which are incorporated by this reference.

(b) Lender's Rights and Obligations. The rights and obligations of a Lender under this Development Agreement will be identical to its rights and obligations under the Applicable Lender Protections.

(c) City's Rights and Obligations.

(i) The City's obligations with respect to a Lender, including any Successor by Foreclosure, will be identical to those of the Port under the Applicable Lender Protections.

(ii) The City will reasonably cooperate with the request of a Lender or Successor by Foreclosure to provide further assurances to assure the Lender or Successor by Foreclosure of its rights under this Development Agreement, which may include execution, acknowledgement, and delivery of additional documents reasonably requested by a Lender confirming the applicable rights and obligations of the City and Lender with respect to an Encumbrance.

(iii) Subject to **Subsection 11.3(d)** (Successor by Foreclosure), no breach by Developer, a Vertical Developer, or a DA Successor of any obligation secured by an Encumbrance will defeat or otherwise impair the Parties' rights or obligations under this Development Agreement.

(d) Successor by Foreclosure. A Successor by Foreclosure will succeed to all of the rights and obligations under and will be deemed a Party to this Development Agreement to the extent of the defaulting Borrower's rights and obligations.

11.4. Requests for Notice.

(a) Lender Request. If the City receives a written request from a Lender, or from Developer or a DA Successor requesting on a Lender's behalf, a copy of any notice of default that the City delivers under this Development Agreement that provides the Lender's address for notice, then the City will deliver a copy to the Lender concurrently with delivery to the Breaching Party. The City will have the right to recover its costs to provide notice from the Breaching Party or the applicable Lender.

(b) City Request. This provision is the City's request under California Civil Code section 2924 that a copy of any notice of default or notice of sale under any Encumbrance be delivered to City at the address shown on the cover page of this Development Agreement.

11.5. No Third-Party Beneficiaries. Except for DA Successors with vested rights and obligations at the Project Site and to the extent of any Interested Person's rights under the DDA, any Vertical DDA, Parcel Lease, or this Development Agreement, the City and Developer do not intend for this Development Agreement to benefit or be enforceable by any other persons.

12. DEVELOPER REPRESENTATIONS AND WARRANTIES

12.1. Due Organization and Standing. Developer represents that it has the authority to enter into this Development Agreement. Developer is a Delaware limited liability company duly organized and validly existing and in good standing under laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted.

12.2. No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Development Agreement and it has no knowledge of any inability to perform its

obligations under this Development Agreement. Developer's execution and delivery of this Development Agreement have been duly and validly authorized by all necessary action. This Development Agreement will be a legal, valid, and binding obligation of Developer, enforceable against Developer on its terms.

12.3. Other Documents. To the current, actual knowledge of Jack Bair, after reasonable inquiry, no document that Developer furnished to the City in relation to this Development Agreement, nor this Development Agreement, contains any untrue statement of material fact or omits any material fact that makes the statement misleading under the circumstances under which the statement was made.

12.4. No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any Insolvency petition or and, to the best of Developer's knowledge, no action is threatened.

13. CITY REQUIREMENTS

The City acknowledges that Developer and Vertical Developers are required to comply the MMRP *(DDA Exh A5)*, Other City Requirements *(DDA Exh A6)*, the Workforce Development Plan *(DDA Exh B6)*, the Transportation Exhibit *(DDA Exh B7)*, and other DDA requirements that further City policies and that the Port, in coordination with Other City Agencies, will be responsible for primarily responsible for monitoring compliance, subject to **Article 8** (Periodic Compliance Review).

14. MISCELLANEOUS

The following provisions apply to this Development Agreement in addition to those in **Appendix Part A** (Standard Provisions and Rules of Interpretation).

14.1. Notices. Notices given under this Development Agreement are governed by *App ¶ A.5 (Notices)*. Notice addresses are listed below.

To the City:	John Rahaim Director of Planning San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94102
With a copy to:	Dennis J. Herrera, Esq. City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn:
To Developer:	Seawall Lot 337 Associates, LLC c/o San Francisco Giants 24 Willie Mays Plaza San Francisco, CA 94107

Attn: Jack Bair, General Counsel

Telephone: (415) 972-1755
Facsimile: (415) 972-2317
Email:jbair@sfgiants.com

14.2. Construction of Agreement. In the event of a conflict between any provision of this Development Agreement and Chapter 56, this Development Agreement will control. All other provisions of Appendix Part A (Standard Provisions and Rules of Interpretation) apply to this Development Agreement.

14.3. Attachments. The attached Appendix, Port Consent, SFMTA Consent, SFPUC Consent, and Exhibits listed below are incorporated into and are a part of this Development Agreement.

EXHIBITS

DA Exhibit A:	Project Site (legal description and diagram)
DA Exhibit B:	Site Plan
DA Exhibit C:	Project Approvals
DA Exhibit D:	Chapter 56 as of the Reference Date

[Remainder of page intentionally left blank.]

Developer and the City have executed this Development Agreement as of the last date written below.

DEVELOPER:

SEAWALL LOT 337 ASSOCIATES, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
John Rahaim
Director of Planning

Date: _____

Authorized by Ordinance No. _____on [effective date].

APPROVED AND AGREED:

By: _____
Naomi Kelly
City Administrator

By: _____
Mohammad Nuru,
Director of Public Works

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

APPENDIX
(To be attached.)

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CONSENT TO DEVELOPMENT AGREEMENT
Port Commission

The Port Commission of the City and County of San Francisco has reviewed this Development Agreement between the City and Developer relating to the proposed development project at Seawall Lot 337 Project which this Consent to Development Agreement ("**Port Consent**") is attached and incorporated. Capitalized terms used in this Port Consent have the meanings given to them in this Development Agreement or the Appendix.

By executing this Port Consent, the undersigned confirms the following:

1. The Port Commission, at a duly noticed public hearing adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP, including Mitigation Measures for which the Port is the responsible agency.

2. At the meeting, the Port Commission considered and consented to this Development Agreement as it relates to matters under Port jurisdiction and agreed to adopt a Parks Plan incorporating the elements of *DA § 5.9 (Parks Plan)*, subject to refinements it deems advisable to further its mission under Applicable Port Laws.

3. The Port Commission also authorized Port staff to take any measures reasonably necessary to assist the City in implementing this Development Agreement in accordance with Port Resolution No. ___.

By authorizing the Port Director to execute this Port Consent, the Port Commission affirms that it does not intend to limit, waive, or delegate in any way its exclusive authority or rights under Applicable Port Laws.

PORT:

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

By: _____
Elaine Forbes,
Executive Director

Date: _____

Authorized by Port Resolution No.
and Board of Supervisors Ordinance No.

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Eileen Malley
Port General Counsel

[Remainder of page intentionally omitted.]

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco has reviewed this Development Agreement between the City and Developer relating to the proposed Project, to which this Consent to Development Agreement ("**SFMTA Consent**") is attached and incorporated. Capitalized terms used in this SFMTA Consent have the meanings given to them in this Development Agreement or the Appendix.

By executing this SFMTA Consent, the undersigned confirms the following:

1. The SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA Findings for the Project, including the Statement of Overriding Considerations and the MMRP contained or referenced therein, consented to and agreed to be bound by this Development Agreement as it relates to matters under SFMTA jurisdiction, and delegated to the Director of Transportation or his designee any future SFMTA approvals under this Development Agreement, subject to Applicable Laws, including the City Charter.

2. The SFMTA Board of Directors also:

a. approved the Infrastructure Plan, including street widths, subject to specified conditions;

b. approved Mitigation Measure M-AQ-2.3, which:

i. requires "a Transportation Demand Management (TDM) Plan with a goal of reducing estimated daily one-way vehicle trips by 20% compared to the total number of one-way vehicle trips identified in the project's Transportation Impact Study at project build-out;" and

ii. is a Developer Mitigation Measure under the MMRP and a Developer Construction Obligation under the DDA;

c. approved Developer's TDM Plan and the Mission Rock Transportation Plan, both of which are attached to the DDA Transportation Exhibit (**DDA Exhibit B7**), and found that the TDM Plan meets the requirements of Mitigation Measure M-MQ-2.3 and incorporates many of the TDM Program strategies described in Section 169;

d. directed the Director of Transportation to administer and direct the allocation and use of Transportation Fees; and

e. concurred with all of the transportation-related mitigation measures.

3. The SFMTA Board of Directors also authorized SFMTA staff to take any measures reasonably necessary to assist the City in implementing the Development Agreement in accordance with SFMTA Resolution No. ___, including the Transportation Exhibit and Transportation-Related Mitigation Measures.

By authorizing the Director of Transportation to execute this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA under Article VIIIA of the City Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY

By: _____
EDWARD D. REISKIN,
Director of Transportation

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Susan Cleveland-Knowles
SFMTA General Counsel

SFMTA Resolution No. _____
Adopted: _____, 2018

Attachments: Mission Rock Transportation Plan and TDM Plan

Transportation Plan and TDM Plan
(To be attached.)

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CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

The Public Utilities Commission of the City and County of San Francisco has reviewed the Development Agreement between the City and Developer relating to the proposed Project to which this Consent to Development Agreement ("**SFPUC Consent**") is attached and incorporated. Capitalized terms used in this SFPUC Consent have the meanings given to them in this Development Agreement or the Appendix.

By executing this SFPUC Consent, the undersigned confirms the following:

1. The SFPUC, after considering at a duly noticed public hearing the CEQA Findings for the Project, including the Statement of Overriding Considerations and the MMRP, and consented to and agreed to be bound by this Development Agreement as it relates to matters under SFPUC jurisdiction.

2. The SFPUC affirmed that Vertical Developers will be required to pay the SFPUC Wastewater Capacity Charge and the SFPUC Water Capacity Charge, each at rates in effect on the applicable connection dates.

3. The SFPUC approved:

a. Developer's Infrastructure Plan, subject to stated conditions; and

b. SFPUC acceptance of $1.5 million as Developer's fair share contribution to the City's offsite AWSS system consistent with the Infrastructure Plan, the terms and timing of payment to be established as a condition of approval to the Tentative Map for the Project Site.

4. SFPUC Power.

a. In accordance with Administrative Code chapter 99, the SFPUC has performed a feasibility study and has determined that it will be able to provide electric power to the Project. SFPUC agrees that applicable SFPUC service will be reasonably available to meet the Project's needs and Developer's schedule, and that the projected price for applicable SFPUC service and related Utility Infrastructure cost allocations are comparable to rates in San Francisco for comparable service. SFPUC will work with Developer to provide applicable SFPUC service for temporary construction and permanent use pursuant to SFPUC *Rules and Regulations for Electric Service*.

b. Developer understands and agrees that all applicable SFPUC service for the Project Site will be provided by SFPUC Power under the terms of an ESA to be completed between SFPUC Power and Developer. Among other things, the ESA, in addition to the ESA's standard terms and conditions, will address some or all of the following:

i. development schedules and milestones for applicable SFPUC service;

ii. termination rights and costs;

iii. offsite Utility Infrastructure requirements, development, costs, and any cost allocation;

iv. onsite Utility Infrastructure requirements, development, costs, and cost allocations; and

v. Developer-provided space for SFPUC electric facilities.

c. The Parties agree to act in good faith to finalize the ESA within 180 days after the Reference Date. If the Parties' good faith efforts do not result in a final ESA within 180 days, the Parties will agree to a reasonable extension of time to complete the ESA. If the Parties' diligent good faith negotiations to enter into an ESA as set forth above are unsuccessful, Developer may elect to pursue alternative service arrangements.

By authorizing the General Manager to execute this SFPUC Consent, the SFPUC does not intend to in any way limit, waive or delegate the exclusive authority of the SFPUC under Article VIIIA of the City Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: _____
HARLAN KELLY,
General Manager

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Francesca Gessner
SFPUC General Counsel

San Francisco Public Utilities Commission
Resolution No. _____
Adopted: _____, 2018

DA EXHIBIT A

Project Site (legal description and diagram)

S-9229
8-28-17

LEGAL DESCRIPTION

"MISSION ROCK PROJECT BOUNDARY"

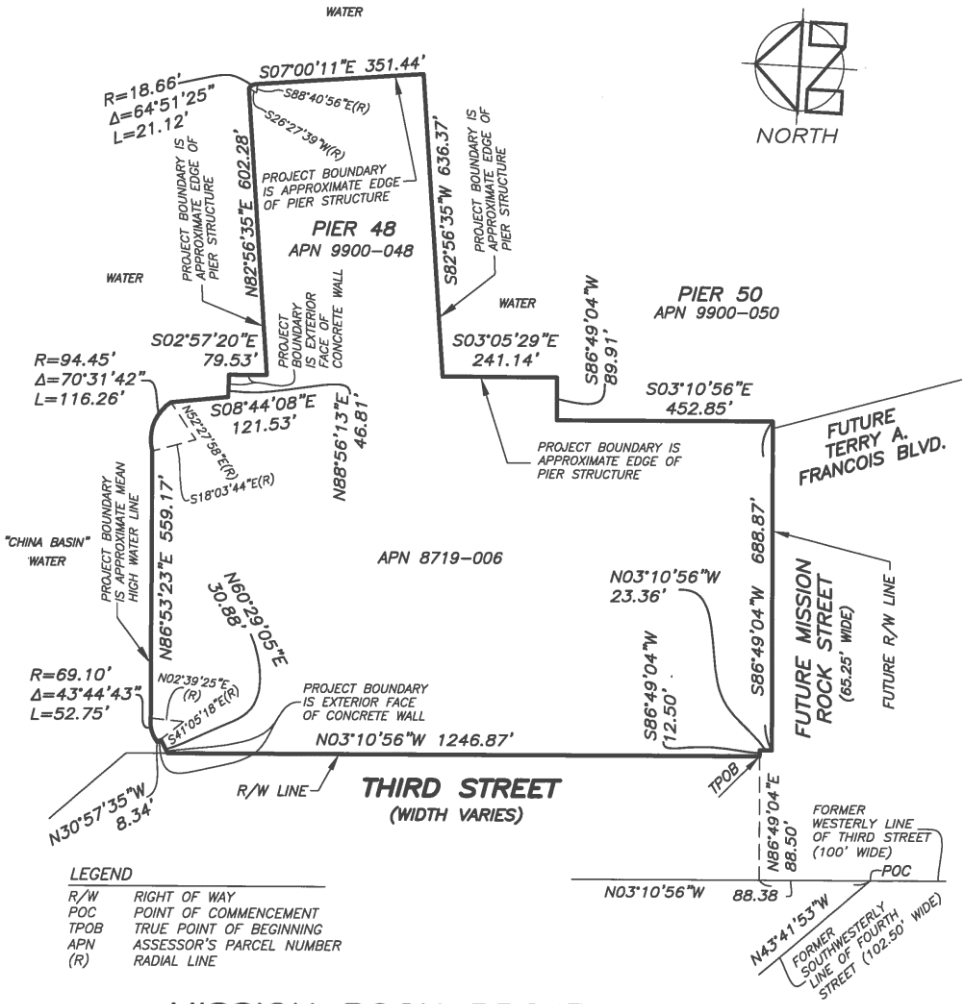
ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE FORMER WESTERLY LINE OF THIRD STREET (100.00 FEET WIDE) WITH THE FORMER SOUTHWESTERLY LINE OF FOURTH STREET (102.50 FEET WIDE), AS SAID STREET LINES ARE SHOWN ON THAT CERTAIN MAP ENTITLED "AMENDED RECORD OF SURVEY MAP OF MISSION BAY" RECORDED JUNE 3, 1999, IN BOOK "Z" OF MAPS AT PAGES 74-94 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE PROLONGATION OF SAID LINE OF THIRD STREET N03°10'56"W 88.38 FEET; THENCE N86°49'04"E 88.50 FEET TO AN ANGLE POINT IN THE CURRENT EASTERLY LINE OF THIRD STREET, SAID ANGLE POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID EASTERLY LINE OF THIRD STREET N03°10'56"W 1246.87 FEET; THENCE N60°29'05"E 30.88 FEET; THENCE N30°57'35"W 8.34 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST WHOSE RADIUS POINT BEARS S41°05'18"E 69.10 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 43°44'43", AN ARC LENGTH OF 52.75 FEET; THENCE N86°53'23"E 559.17 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST WHOSE RADIUS POINT BEARS S18°03'44"E 94.45 FEET; THENCE EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 70°31'42", AN ARC LENGTH OF 116.26 FEET; THENCE S08°44'08"E 121.53 FEET; THENCE N88°56'13"E 46.81 FEET; THENCE S02°57'20"E 79.53 FEET; THENCE N82°56'35"E 602.28 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST WHOSE RADIUS POINT BEARS S26°27'39"W 18.66 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 64°51'25", AN ARC LENGTH OF 21.12 FEET; THENCE S07°00'11"E 351.44 FEET; THENCE S82°56'35"W 636.37 FEET; THENCE S03°05'29"E 241.14 FEET; THENCE S86°49'04"W 89.91 FEET; THENCE S03°10'56"E 452.85 FEET TO THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF FUTURE MISSION ROCK STREET (65.25 FEET WIDE); THENCE ALONG SAID EASTERLY PROLONGATION AND ALONG SAID NORTHERLY LINE OF FUTURE MISSION ROCK STREET S86°49'04"W 688.87 FEET TO THE EASTERLY LINE OF THIRD STREET; THENCE ALONG SAID EASTERLY LINE OF THIRD STREET N03°10'56"W 23.36 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID EASTERLY LINE OF THIRD STREET S86°49'04"W 12.50 FFET TO THE TRUE POINT OF BEGINNING.

CONTAINING 27.843 ACRES, MORE OR LESS.

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE THIRD STREET MONUMENT LINE TAKEN TO BE N03°10'56"W AS SHOWN ON THAT CERTAIN "FINAL MAP" FILED FOR RECORD ON MAY 31, 2005, IN BOOK BB OF MAPS, AT PAGES 6-10 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO.

PLAT TO ACCOMPANY LEGAL DESCRIPTION



SUBJECT: **MISSION ROCK PROJECT BOUNDARY**

BY JG CHKD. BR DATE 8/28/17 SCALE 1"=250' SHEET 1 OF 1 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

S-9229-BNDY PLAT.DWG

DA EXHIBIT B

Site Plan

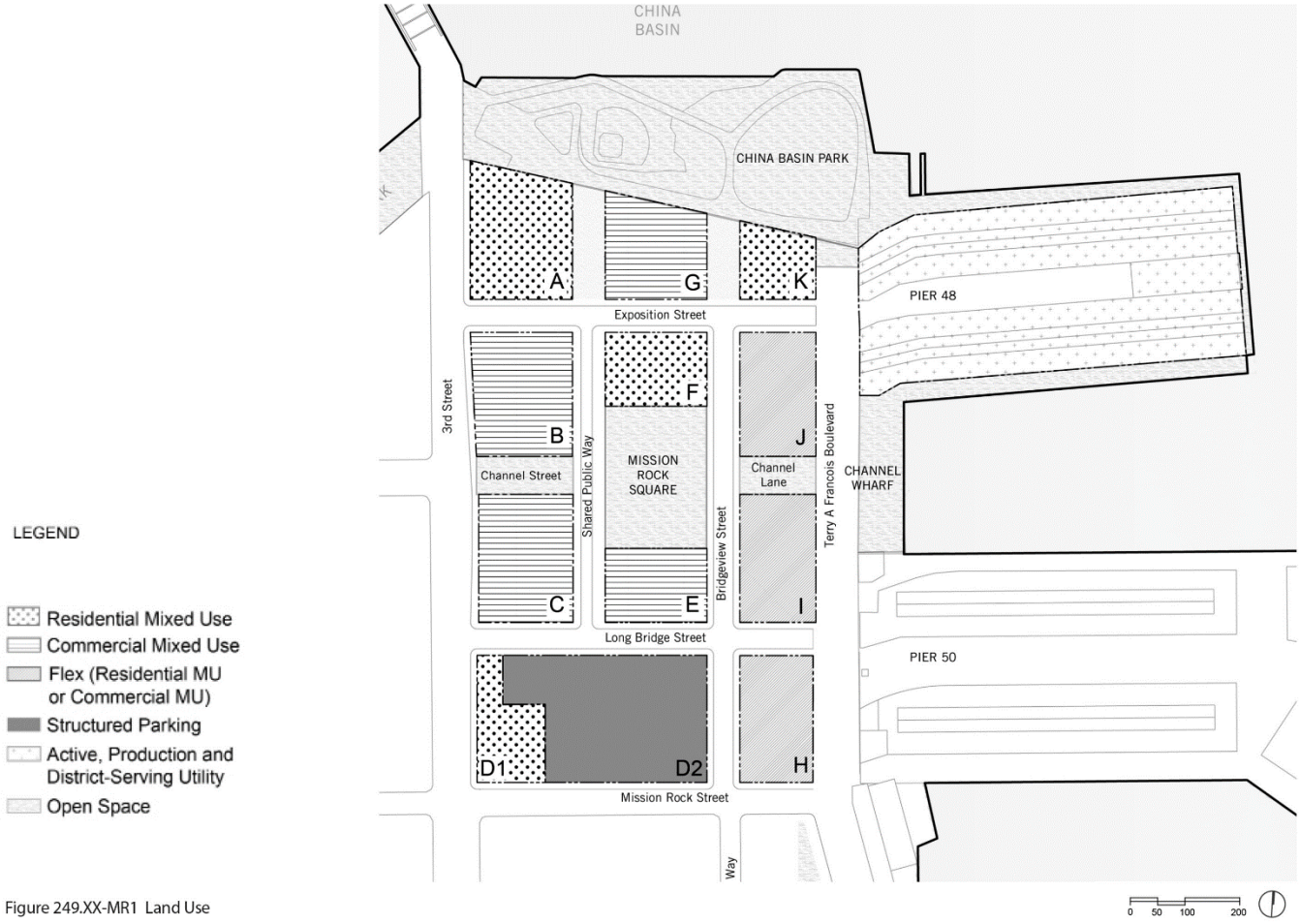


Figure 249.XX-MR1 Land Use

DA EXHIBIT C

Project Approvals

1. **Final Environmental Impact Report**, Planning Dept. Case No. 2013.0208ENV
   - Certify FEIR and adopt CEQA Findings: Planning Commission Motion No. 20017 and Motion No. 20018, October 5, 2017
   - Adopt CEQA Findings and MMRP: Port Resolution No. _____
   - Affirm Planning Commission's certification of FEIR and adopt CEQA Findings and MMRP: Board of Supervisors Resolution No. _____
2. **Planning Code and Zoning Map amendments**
   - Recommend: Planning Commission Resolution No. 20019, October 5, 2017
   - Consent: Port Resolution No. _____
   - Approve: Board of Supervisors Ordinance No. _____
3. **Development Agreement and amendments and waivers of specified provisions of the Administrative and Subdivision Codes**
   - Recommend: Planning Commission Resolution No. 20020, October 5, 2017
   - Consent: Port Resolution No. _____
   - Consent: SFPUC Resolution No. _____
   - Consent: SFMTA Resolution No. _____
   - Approve: Board of Supervisors Ordinance No. _____
4. **Mission Rock Design Controls**
   - Approve: Planning Commission Motion No. 20021, October 5, 2017
   - Approve: Port Resolution No. _____
5. **Master Lease**
   - Adopt public trust findings, approve, and recommend: Port Resolution No. _____
   - Adopt public trust findings and approve under Charter § 9.118: Board of Supervisors Resolution No. _____
6. **Disposition and Development Agreement and form of Parcel Lease**
   - Adopt public trust findings, approve, and recommend: Port Resolution No. _____
   - Approve under Charter § 9.118: Board of Supervisors Resolution No. _____
7. **Waterfront Land Use Plan / Waterfront Design and Access Element amendments**
   - Adopt public trust findings and approve: Port Resolution No. _____
8. **Infrastructure Financing District Project Area I**
   - Adopt public trust findings, approve, and recommend: Port Resolution No. _____
   - Approve: Board of Supervisors Ordinance Nos. _____
9. **Memorandum of Understanding re Interagency Cooperation**
   - Approve and recommend: Port Resolution No. _____
   - Adopt CEQA Findings and Consent: SFMTA Board Resolution No. _____

- Adopt CEQA Findings and Consent: SFPUC Resolution No. _____
- Approve: Board of Supervisors Resolution No. _____

10. Memorandum of Understanding re Collection and Allocation of Taxes

- Approve: Port Resolution No. _____
- Approve: Board of Supervisors Resolution No. _____

11. Mission Rock South Redevelopment Plan Amendment, OPA Amendment, and Design for Development Plan Amendment

- Approve: OCII Commission Resolution No. _____
- Approve: Board of Supervisors Ordinance No. ___

DA EXHIBIT D

Chapter 56 as of Reference Date

Print

San Francisco Administrative Code

CHAPTER 56: DEVELOPMENT AGREEMENTS

SEC. 56.1. FINDINGS.

The Board of Supervisors ("Board") concurs with the State Legislature in finding that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning and development of infrastructure and public facilities which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant/developer for a development project that upon approval of the project, the applicant/developer may proceed with the project in accordance with specified policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.2. PURPOSE AND APPLICABILITY.

(a) The purpose of this Chapter is to strengthen the public planning process by encouraging private participation in the achievement of comprehensive planning goals and reducing the economic costs of development. A development agreement reduces the risks associated with development, thereby enhancing the City's ability to obtain public benefits beyond those achievable through existing ordinances and regulations. To accomplish this purpose the procedures, requirements and other provisions of this Chapter are necessary to promote orderly growth and development (such as, where applicable and appropriate, provision of housing, employment and small business opportunities to all segments of the community including low income persons, minorities and women), to ensure provision for adequate public services and facilities at the least economic cost to the public, and to ensure community participation in determining an equitable distribution of the benefits and costs associated with development.

(b) Such agreements shall only be used for (1) affordable housing developments or (2) large multi-phase and/or mixed-use developments involving public improvements, services, or facilities installations, requiring several years to complete, as defined below in Section 56.3, or a housing development with a minimum of 1,000 units, as defined below in Section 56.3; or (3) rental housing developments with on-site affordable units, as defined below in Section 56.3.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 67-05, File No. 041748, App. 4/15/2005; Ord. 312, File No. 100046, App. 12/23/2010)

SEC. 56.3. DEFINITIONS.

The following definitions shall apply for purposes of this Chapter:

(a) "Affordable housing development" shall mean for purposes of Section 56.2(b)(1), any housing development which has a minimum of 30 percent of its units affordable to low income households, and a total of 60 percent of its units affordable to households, as defined by the U.S. Census, whose immediate household income does not exceed 120 percent of the median household income for the San Francisco Primary Metropolitan Statistical Area, with the remaining 40 percent of its units unrestricted as to affordability. For purposes of this definition of "affordable housing development," "low income" shall mean the income of households, as defined by the U.S. Census whose immediate household income does not exceed 80 percent of the median household income for the San Francisco Primary Metropolitan Statistical Area. "Median household income" for the San Francisco Primary Metropolitan Statistical Area shall be as determined by the U.S. Department of Housing and Urban Development and adjusted according to the determination of that Department and published from time to time. In the event that such income determinations are no longer published by the Department of Housing and Urban Development, median household income shall mean the median gross yearly income of a household in the City and County of San Francisco, adjusted for household size, as published periodically by the California Department of Housing and Community Development. Such affordable housing development may include neighborhood commercial facilities which are physically and financially an integral part of the affordable housing project and which will provide services to local residents.

(b) "Applicant/Developer" shall mean a person or entity who has legal or equitable interest in the real property which is the subject of the proposed or executed development agreement for an "affordable housing development" or a "large multi-phase and/or mixed-use development," as those terms are defined herein, or such person's or entity's authorized agent or successor in interest; provided, however, that an entity which is subject to the requirements of City Planning Code Section 304.5 relating to institutional master plans does not qualify as an applicant for a development agreement.

(c) "Collateral agreement" shall mean a written contract entered into by the applicant/developer and/or governmental agencies with other entities (including, but not limited to, community coalitions) for the purpose of having said entities provide for and implement social, economic, or environmental benefits or programs; provided, however, that such term does not include agreements between the applicant/developer or governmental agencies and (1) construction contractors and subcontractors, (2) construction managers, (3) material suppliers, and (4) architects, engineers, and lawyers for customary architectural, engineering or legal services.

(d) "Commission" shall mean the Planning Commission.

(e) "Director" shall mean the Director of the Planning Department.

(f) "Housing development with a minimum of 1,000 units" shall mean a proposed residential development project which: (1) is on a site which exceeds two and one-half acres in area, (2) includes two or more buildings to be constructed on the site, and (3) includes a proposal for constructing or participating in providing, either off-site or on-site, public improvements, facilities, or services beyond those achievable through existing ordinances and regulations.

(g) "Large multi-phase and/or mixed-use development" shall mean a proposed development project which: (1) is on a site which exceeds five acres in area, (2) includes two or more buildings to be constructed sequentially on the site, and (3) includes a proposal for constructing or participating in providing, either off-site or on-site, public improvements, facilities, or services beyond those achievable through existing ordinances and regulations.

(h) "Material modification" shall mean any proposed amendment or modification to either a proposed development agreement approved by the Commission, or a previously executed development agreement, which amendment or modification is otherwise required by the terms of the development agreement, which changes any provision thereof regarding the following: (1) duration of the agreement; (2) permitted uses of the subject property; (3) density or intensity of the permitted uses; (4) location, height or size of any structures, buildings, or major features; (5) reservation or dedication of land; (6) any conditions, terms, restrictions and requirements relating to subsequent discretionary actions as to design, improvements, construction standards and specifications; (7) any other condition or covenant relating to the financing or phasing of the development which substantially modifies the use of the property, the phasing of the development, or the consideration exchanged between the parties as recited in the proposed development agreement; (8) the type, number, affordability level, and/or tenure of any proposed affordable housing as well as any change as to performance of such public benefits, including but not limited to timing, phasing, method of performance or parties involved; or (9) any other terms or conditions of the development agreement if the development agreement provides that amendment of said specified term or condition would be a material modification.

(i) "Minor modification" shall mean any amendment or modification to the development agreement which relates to any provision not deemed to be a "material modification."

(j) "Rental housing developments with on-site affordable units" shall mean a proposed residential development project the project sponsor of which covenants to provide on-site units to satisfy the Inclusionary Affordable Housing Program, as set forth in Planning Code Sections 415—417, as an alternative to payment of the Affordable Housing Fee.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 67-05, File No. 041748, App. 4/15/2005; Ord. 312, File No. 100046, App. 12/23/2010)

SEC. 56.4. FILING OF APPLICATION; FORMS; INITIAL NOTICE AND HEARING.

(a) The Director may prescribe the form of the application for the preparation and implementation of development agreements.

(b) The applicant must list on the application the anticipated public benefits which would exceed those required by existing ordinances and regulations. The public benefits ultimately provided by an approved development agreement may differ from those initially identified by the applicant/developer. The Director may require an applicant/developer to submit such additional information and supporting data as the Director considers necessary to process the application; provided, however, that the Director shall not require the applicant/developer to submit, as part of the application, special studies or analyses which the Director would customarily obtain through the environmental review process.

(c) The Director shall endorse the application the date it is received. If the Director finds that the application is complete, the Director shall (1) accept the application for filing, (2) publish notice in the official newspaper of acceptance of said application, (3) make the application publicly available, and (4) schedule a public hearing before the Commission within 30 days following receipt of a completed application. At said public hearing, the

Director shall make a recommendation with respect to the fee to be paid by the applicant/developer as set forth in Section 56.20(b).

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.5. FORM OF AGREEMENT.

A proposed development agreement, and any modifications or amendments thereto, must be approved as to form by the City Attorney prior to any action by the Director, Commission or Board of Supervisors.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.6. SIGNATORIES TO THE DEVELOPMENT AGREEMENT.

(a) **Applicant.** Only an applicant/developer, as that term is defined in Section 56.3, may file an application to enter into a development agreement.

(b) **Governmental Agencies.** In addition to the City and County of San Francisco and the applicant/developer, any federal, State or local governmental agency or body may be included as a party or signatory to any development agreement.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.7. CONTENTS OF DEVELOPMENT AGREEMENT.

(a) **Mandatory Contents.** A development agreement, by its express terms or by reference to other documents, shall specify (1) the duration of the agreement, (2), the permitted uses of the property, (3) the density or intensity of use, (4) the maximum height and size of proposed buildings, (5) the provisions for reservation or dedication of land for public purposes, (6) for any project proposing housing, the number, type, affordability and tenure of such housing, (7) the public benefits which would exceed those required by existing ordinances and regulations, and (8) nondiscrimination and affirmative action provisions as provided in subsection (c) below.

(b) **Permitted Contents.** The development agreement may (1) include conditions, terms, restrictions, and requirements for subsequent discretionary actions, (2) provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time, (3) include terms and conditions relating to applicant/developer and/or City financing or necessary public facilities and subsequent reimbursement by other private party beneficiaries, (4) require compliance with specified terms or conditions of any collateral agreements pursuant to Section 56.11, and (5) include any other terms or conditions deemed appropriate in light of the facts and circumstances.

(c) **Nondiscrimination/Affirmative Action Requirements.**

(1) **Nondiscrimination Provisions of the Development Agreement.** The development agreement shall include provisions obligating the applicant/developer not to discriminate on the grounds, or because of, race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), against any employee of, or applicant for employment with the applicant/developer or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by applicant/developer. The development agreement shall require that a similar provision be included in all subordinate agreements let, awarded, negotiated or entered into by the applicant/developer for the purpose of implementing the development agreement.

(2) **Affirmative Action Program.** The development agreement shall include a detailed affirmative action and employment and training program (including without limitation, programs relating to women, minority and locally-owned business enterprises), containing goals and timetables and a program for implementation of the affirmative action program. For example, programs such as the following may be included:

(i) Apprenticeship where approved programs are functioning, and other on-the-job training for a nonapprenticeable occupation;

(ii) Classroom preparation for the job when not apprenticeable;

(iii) Preapprenticeship education and preparation;

(iv) Upgrading training and opportunities;

(v) The entry of qualified women and minority journeymen into the industry; and

(vi) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, and encouraging the full and equitable participation of minority and women business enterprises and local businesses (as defined in Section 12D of this Code and implementing regulations) in the provision of goods and services on a contractual basis.

(3) **Reporting and Monitoring.** The development agreement shall specify a reporting and monitoring process to ensure compliance with the non-discrimination and affirmative action requirements. The reporting and monitoring process shall include, but not be limited to, requirements that:

(i) A compliance monitor who is not an agent or employee of the applicant/developer be designated to report to the Director regarding the applicant/developer's compliance with the nondiscrimination and affirmative action requirements;

(ii) The applicant/developer permit the compliance monitor or the Director or his designee reasonable access to pertinent employment and contracting records, and other pertinent data and records, as specified in the Development Agreement for the purpose of ascertaining compliance with the nondiscrimination and affirmative action provisions of the development agreement;

(iii) The applicant/developer annually file a compliance report with the compliance monitor and the Director detailing performance pursuant to its affirmative action program, and the compliance monitor annually reports its findings to the Director; such reports shall be included in and subject to the periodic review procedure set forth in Sec. 56.17.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.8. NOTICE.

The Director shall give notice of intention to consider adoption, amendment, modification, or termination of a development agreement for each public hearing required to be held by the Commission under this Chapter. The Clerk of the Board of Supervisors shall give such notice for each public hearing required to be held by the Board of Supervisors. Such notices shall be in addition to any other notice as may be required by law for other actions to be considered concurrently with the development agreement.

(a) **Form of Notice.**

(1) The time and place of the hearing;

(2) A general summary of the terms of the proposed development agreement or amendment to be considered, including a general description of the area affected, and the public benefits to be provided; and

(3) Other information which the Director, or Clerk of the Board of Supervisors, considers necessary or desirable.

(b) **Time and Manner of Notice.**

(1) **Publication and Mailing.** Notice of hearing shall be provided in the same manner as that required in City Planning Code Section 306.3 for amendments to that Code which would reclassify land; where mailed notice is otherwise required by law for other actions to be considered concurrently with the development agreement, notice of a public hearing before the Commission on the development agreement shall be included

on the next Commission calendar to be mailed following the date of publication of notice in the official newspaper.

(2) **Notice to Local Agencies.** Notice of the hearing shall also be mailed at least 10 days prior to the hearing to any local public agency expected to provide water, transit, sewage, streets, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected by the development agreement.

(c) **Failure to Receive Notice.** The failure of any person to receive notice required by law does not affect the authority of the City and County of San Francisco to enter into a development agreement.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.9. RULES GOVERNING CONDUCT OF HEARING.

The Commission's public hearing on the proposed development agreement shall be conducted in accordance with the procedure for the conduct of reclassification hearings as provided in Subsections (b) and (c) of Section 306.4 of the City Planning Code. Such public hearing on the proposed development agreement shall be held prior to or concurrently with the public hearing for consideration of any other Commission action deemed necessary to the approval or implementation of the proposed development agreement, unless the Commission determines, after a duly noticed public hearing pursuant to Section 56.8, that proceeding in a different manner would further the public interest; provided, however, that any required action under the California Environmental Quality Act shall not be affected by this Section.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.10. DEVELOPMENT AGREEMENT NEGOTIATION REPORT AND DOCUMENTS.

(a) **Report.** The Director shall prepare a report on development agreement negotiations between the applicant and the City and County of San Francisco (City), which report shall be distributed to the Commission and Board of Supervisors, and shall be available for public review 20 days prior to the first public hearing on the proposed development agreement. Said report shall include, for each negotiation session between the applicant and the City: (1) an attendance list; (2) a summary of the topics discussed; and (3) a notation as to any terms and conditions of the development agreement agreed upon between the applicant and the City.

(b) **Documents.** The Director shall (1) maintain a file containing documents exchanged between the applicant/developer and the City's executive offices and departments; and (2) endeavor to obtain copies and maintain a list of all correspondence which executive offices and departments received from and sent to the public relating to the development agreement. The Director shall make said documents and the correspondence list available for public review 20 days prior to the first public hearing on the proposed development agreement.

(c) **Update of Report, Documents, and Correspondence List.** The Director shall update the negotiation session report and the correspondence list, and continue to maintain a file of documents exchanged between the applicant/developer and the City until a development agreement is finally approved. The Director shall make the updated report, correspondence list, and documents available to the public at least five working days before each public hearing on the proposed development agreement.

(d) **Remedies.** No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") which may occur with respect to City compliance with this Section 56.10. This section is not intended to affect rights and remedies with respect to public records otherwise provided by law.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.11. COLLATERAL AGREEMENTS.

(a) **Filing.** In order to qualify for consideration under the provisions of this section, the party to the collateral agreement seeking such consideration must: (1) submit a copy of the executed collateral agreement to the Director, (2) identify the specific terms and conditions of said collateral agreement which said party believes are necessary to achieve the public purposes sought to be achieved by the City and County through the development agreement process, and (3) provide contemporaneous notice to any other party or parties to the collateral agreement or the development agreement that a request for consideration pursuant to this section was filed. The Director shall forward copies of all collateral agreements received to the City Attorney's Office for review.

(b) **Recommendation of the Director Prior to the First Public Hearing on the Proposed Development Agreement.**

(1) The Director is obligated to consider and make a recommendation only as to those collateral agreements which satisfy the provisions of Section 56.11(a) above, and which are received by the Director within seven days after the date of publication of notice of the first hearing on the proposed development agreement. The Director shall consider those collateral agreements which are on the list provided pursuant to Section 56.11(d) below.

(2) With respect to collateral agreements received pursuant to the provisions set forth above, the Director shall prepare a report to the Commission on said collateral agreements. If the Director finds that applicant compliance with certain specified terms or conditions of said collateral agreements is necessary to achieve the public purposes sought by the City through the development agreement process, then the Director shall recommend that such terms or conditions be incorporated into the proposed development agreement. If the Director recommends incorporation into the development agreement of any terms or conditions of any collateral agreements, then the Director's report shall also note whether the other party or parties to the collateral agreement or proposed development agreement objects, and the basis for that objection.

(3) The provisions of this section are not intended to limit the power of the Commission or the Board to amend the proposed development agreement to incorporate terms or conditions of collateral agreements.

(c) **Annual Recommendation of the Director.** After execution of a development agreement,

(1) The Director shall consider and make a recommendation as to those collateral agreements which satisfy the provisions of Section 56.11(a) above, and which are received 30 days prior to the date scheduled for periodic review, as determined pursuant to Section 56.17(a). The Director shall consider those collateral agreements which are on the list provided pursuant to Section 56.11 (d) below.

(2) With respect to collateral agreements received pursuant to the provisions set forth above, the Director shall prepare a report to the Commission on said collateral agreements. The Director shall also consult with the applicant/developer concerning said collateral agreements. If the Director finds that applicant/developer compliance with certain specified terms or conditions of said collateral agreements would substantially further attainment of the public purposes which were recited as inducement for entering into the development agreement, then the Director shall recommend that the Commission propose an amendment to the development agreement to incorporate said terms and conditions. If the Director recommends proposal of an amendment to incorporate into the development agreement specified terms or conditions of any collateral agreements, then the Director's report shall also note whether the other party or parties to the collateral agreement or development agreement objects, and the basis for that objection.

(d) **Applicant/Developer Disclosure of Collateral Agreements.**

(1) At least 21 days prior to the first hearing on the proposed development agreement, the applicant/developer shall provide the Director, for the Director's consideration, a list of all collateral agreements as defined in Section 56.3(c) that have been entered into by the applicant/developer.

(2) At least 30 days prior to the date scheduled for periodic review pursuant to Section 56.17(a), the applicant/developer shall provide the Director, for the Director's consideration, an update to the list prepared pursuant to Subsection (d)(1) above, or any previous list prepared pursuant to this Subsection (d)(2), as

applicable, identifying all such collateral agreements entered into subsequent to the date of the first list, or subsequent updates, as appropriate.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.12. IRREGULARITY IN PROCEEDINGS.

No action, inaction or recommendation regarding the proposed development agreement or any proposed amendment shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to the application, notice, finding, record, hearing, report, summary, recommendation, or any matters of procedure whatever unless after an examination of the entire record, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error is prejudicial or that injury resulted if error is shown.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.13. DETERMINATION BY COMMISSION.

(a) **Public Hearing.** The Commission shall hold a public hearing to consider and act on a proposed development agreement after providing notice as required under Section 56.8.

(b) **Recommendations to Board of Supervisors.** Following the public hearing, the Commission may approve or disapprove the proposed development agreement, or may modify the proposed development agreement as it determines appropriate. The Commission shall make its final recommendation to the Board of Supervisors which shall include the Commission's determination of whether the development agreement proposed is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable area or specific plan, and the priority policies enumerated in City Planning Code Section 101.1. The decision of the Commission shall be rendered within 90 days from the date of conclusion of the hearing; failure of the Commission to act within the prescribed time shall be deemed to constitute disapproval.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.14. DECISION BY BOARD OF SUPERVISORS.

(a) **Action by Board of Supervisors.** The Board of Supervisors shall hold a public hearing on the proposed development agreement approved by the Commission. After the Board of Supervisors completes its public hearing, it may approve or disapprove the proposed development agreement recommended by the Commission. If the Commission disapproves the proposed development agreement, that decision shall be final unless the applicant/developer appeals the Commission's determination to the Board of Supervisors. The applicant/developer may appeal by filing a letter with the Clerk of the Board of Supervisors within 10 days following the Com-mission's disapproval of the proposed development agreement. The procedures for the Board's hearing and decision shall be the same as those set forth in City Planning Code Sections 308.1(c) and 308.1(d) with respect to an appeal of a Commission disapproval of a City Planning Code amendment initiated by application of one or more interested property owners.

(b) **Material Modification of the Commission's Recommended Development Agreement.** The Board of Supervisors may adopt a motion proposing a material modification to a development agreement recommended by the Commission, as defined in Section 56.3 herein. In such event, the material modification must be referred back to the Commission for report and recommendation pursuant to the provisions of Subdivision (c) below. However, if the Commission previously considered and specifically rejected the proposed material modification, then such modification need not be referred back to the Commission. The Board of Supervisors may adopt any minor modification to the proposed development agreement recommended by the Commission which it determines appropriate without referring the proposal back to the Commission.

(c) **Consideration of Material Modification By the Commission.** The Commission shall hold a public hearing and render a decision on any proposed material modification forwarded to the Commission by motion of the Board within 90 days from the date of referral of the proposed modification by the Board to the Commission; provided, however, if the Commission has not acted upon and returned the proposed material modification within such 90 day period, the proposal shall be deemed disapproved by the Commission unless the Board, by resolution, extends the prescribed time within which the Commission is to render its decision.

(d) **Effect of Commission Action on Proposed Material Modification.** The Board of Supervisors shall hold public hearing to consider the Commission's action on the proposed material modification. If the Commission approves the Board's proposed material modification, the Board may adopt the modification to the agreement by majority vote. If the Commission disapproves the Board's proposed material modification, or has previously specifically rejected the proposed material modification, then the Board may adopt the material modification to the development agreement by a majority vote, unless said modification would reclassify property or would establish, abolish, or modify a setback line, in which case the modification may be adopted by the Board only by a vote of not less than of all of the members of said Board.

(e) **Consistency With General and Specific Plans.** The Board of Supervisors may not approve the development agreement unless it receives the Commission's determination that the agreement is consistent with the Master Plan, any applicable area or specific plan and the Priority Policies enumerated in City Planning Section 101.1.

(f) **Approval of Development Agreement.** If the Board of Supervisors approves the development agreement, it shall do so by the adoption of an ordinance. The Board of Supervisors may not vote on the development agreement ordinance on second reading unless the final version of the development agreement ordinance is available for public review at least two working days prior to the second reading. The development agreement shall take effect upon its execution by all parties following the effective date of the ordinance.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.15. AMENDMENT AND TERMINATION OF AN EXECUTED DEVELOPMENT AGREEMENT BY MUTUAL CONSENT.

(a) The development agreement may further define the extent to which changes in the project will require an amendment to the development agreement.

(b) Either the applicant/developer or the City and County may propose an amendment to, or cancellation in whole or in part of, any development agreement. Any amendment or cancellation shall be by mutual consent of the parties, except as otherwise provided in the development agreement or in Section 56.16.

(c) The procedure for proposing and adopting an amendment which constitutes (1) a material modification, (2) the termination in whole or in part of the development agreement, or (3) a minor modification which the Commission or Board has requested to review pursuant to subsection (d) below, shall be the same as the procedure for entering into an agreement in the first instance, including, but not limited to, the procedures described in Section 56.4, above.

(d) Any proposed amendment or modification to the development agreement which would constitute a minor modification shall not require a noticed public hearing before the parties may execute an amendment to the agreement. The Director may commit to a minor modification on behalf of the City if the following conditions are satisfied:

(1) The Director has reached agreement with the other party or parties to the development agreement regarding the modification;

(2) The Director has: (i) notified the Commission and the Board; (ii) caused notice of the amendment to be published in the official newspaper and included on the Commission calendar; (iii) caused notice to be mailed to the parties to a collateral agreement if specific terms or conditions of said collateral agreement were

incorporated into the development agreement and said terms or conditions would be modified by said minor modification; and (iv) caused notice to be mailed to persons who request to be so notified; and

(3) No member of either the Board or Commission has requested an opportunity to review and consider the minor modification within 14 days following receipt of the Director's notice. Upon expiration of the 14-day period, in the event that neither entity requests a hearing, the decision of the Director shall be final.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.16. RECORDATION OF DEVELOPMENT AGREEMENTS AMENDMENT OR TERMINATION.

(a) Within 10 days after the execution of the development agreement, or any amendments thereto, the Clerk of the Board of Supervisors shall have the agreement recorded with the County Recorder.

(b) If the parties to the agreement or their successors in interest amend or terminate the agreement as provided herein, or if the Board of Supervisors terminates or modifies the agreement as provided herein for failure of the applicant/developer to comply in good faith with the terms or conditions of the agreement, the Clerk of the Board of Supervisors shall have notice of such action recorded with the County Recorder.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91)

SEC. 56.17. PERIODIC REVIEW.

(a) **Time for and Initiation of Review.** The Director shall conduct a review in order to ascertain whether the applicant/developer has in good faith complied with the development agreement. The review process shall commence at the beginning of the second week of January following final adoption of a development agreement, and at the same time each year thereafter for as long as the agreement is in effect. The applicant/developer shall provide the Director with such information as is necessary for purposes of the compliance review.

Prior to commencing review, the Director shall provide written notification to any party to a collateral agreement which the Director is aware of pursuant to Sections 56.11(a) and (d), above. Said notice shall summarize the periodic review process, advising recipients of the opportunity to provide information regarding compliance with the development agreement. Upon request, the Director shall make reasonable attempts to consult with any party to a collateral agreement if specified terms and conditions of said agreement have been incorporated into the development agreement. Any report submitted to the Director by any party to a collateral agreement, if the terms or conditions of said collateral agreement have been incorporated into the development agreement, shall be transmitted to the Commission and/or Board of Supervisors.

(b) **Finding of Compliance by Director.** If the Director finds on the basis of substantial evidence, that the applicant/developer has complied in good faith with the terms and conditions of the agreement, the Director shall notify the Commission and the Board of Supervisors of such determination, and shall at the same time cause notice of the determination to be published in the official newspaper and included on the Commission calendar. If no member of the Commission or the Board of Supervisors requests a public hearing to review the Director's determination within 14 days of receipt of the Director's notice, the Director's determination shall be final. In such event, the Director shall issue a certificate of compliance, which shall be in recordable form and may be recorded by the developer in the official records. The issuance of a certificate of compliance by the Director shall conclude the review for the applicable period.

(c) **Public Hearing Required.** If the Director determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the development agreement, or otherwise determines that the public interest would be served by further review, or if a member of the Commission or Board of Supervisors requests further review pursuant to Subsection (b) above, the Director shall make a report to the Commission which shall conduct a public hearing on the matter. Any such public hearing must be held no sooner than 30 days, and no later than 60 days, after the Commission has received the

Director's report. The Director shall provide to the applicant/developer (1) written notice of the public hearing scheduled before the Commission at least 30 days prior to the date of the hearing, and (2) a copy of the Director's report to the Commission on the date the report is issued.

(d) **Findings Upon Public Hearing.** At the public hearing, the applicant/developer must demonstrate good faith compliance with the terms of the development agreement. The Commission shall determine upon the basis of substantial evidence whether the applicant/developer has complied in good faith with the terms of the development agreement.

(e) **Finding of Compliance by Commission.** If the Commission, after a hearing, determines on the basis of substantial evidence that the applicant/developer has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall instruct the Director to issue a certificate of compliance, which shall be in recordable form, may be recorded by the applicant/developer in the official records, and which shall conclude the review for that period; provided that the certificate shall not be issued until after the time has run for the Board to review the determination. Such determination shall be reported to the Board of Supervisors. Notice of such determination shall be transmitted to the Clerk of the Board of Supervisors within three days following the determination. The Board may adopt a motion by majority vote to review the decision of the Planning Commission within 10 days of the date after the transmittal. A public hearing shall be held within 30 days after the date that the motion was adopted by the Board. The Board shall review all evidence and testimony presented to the Planning Commission, as well as any new evidence and testimony presented at or before the public hearing. If the Board votes to overrule the determination of the Planning Commission, and refuses to approve issuance of a certificate of compliance, the Board shall adopt written findings in support of its determination within 10 days following the date of such determination. If the Board agrees with the determination of the Planning Commission, the Board shall notify the Planning Director to issue the certificate of compliance.

(f) **Finding of Failure of Compliance.** If the Commission after a public hearing determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall either (1) extend the time for compliance upon a showing of good cause; or (2) shall initiate proceedings to modify or terminate the agreement pursuant to Section 56.18.

(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91; Ord. 287-96, App. 7/12/96)

SEC. 56.18. MODIFICATION OR TERMINATION.

(a) If the Commission, upon a finding pursuant to Subdivision (f) of Section 56.17, determines that modification of the agreement is appropriate or that the agreement should be terminated, the Commission shall notify the applicant/developer in writing 30 days prior to any public hearing by the Board of Supervisors on the Commission's recommendations.

(b) **Modification or Termination.** If the Commission, upon a finding pursuant to Subdivision (f) of Section 56.17, approves and recommends a modification or termination of the agreement, the Board of Supervisors shall hold a public hearing to consider and determine whether to adopt the Commission recommendation. The procedures governing Board action shall be the same as those applicable to the initial adoption of a development agreement; provided, however, that consent of the applicant/developer is not required for termination under this section.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.19. LIMITATION ON ACTIONS.

(a) Any decision of the Board pursuant to this Chapter shall be final. Any court action or proceeding to attack, review, set aside, void or annul any final decision or determination by the Board shall be commenced within 90 days after (1) the date such decision or determination is final, or (2) when acting by ordinance, after the ordinance is signed by the Mayor, or is otherwise finally approved.

(b) Any court action or proceeding to attack, review, set aside, void or annul any final decision or determination by (1) the Director pursuant to Section 56.15(d)(iii), or (2) the Commission pursuant to Section 56.17(e) shall be commenced within 90 days after said decision is final.

(Added by Ord. 372-88, App. 8/10/88)

SEC. 56.20. FEE.

In order to defray the cost to the City and County of San Francisco of preparing, adopting, and amending a development agreement, a fee shall be charged and collected in accord with the procedures described below:

(a) **Cost Estimate and Application Report.** The reasonable costs to the various departments of the City and County of San Francisco including, but not limited to, the Planning Department, the Department of Public Works, the Mayor's Office of Housing, the Real Estate Department and the City Attorney's Office for staff time, necessary consultant services and associated costs of materials and administration will vary according to the size and complexity of the project. Accordingly, upon receipt of an application for a development agreement, the Planning Department, after consultation with the applicant/developer, any other parties identified in the application as parties to the proposed development agreement, and the affected City and County departments, shall prepare an estimated budget of the reasonable costs to be incurred by the City and County (1) in the preparation and adoption of the proposed development agreement, and (2) in the preparation of related documents where the costs incurred are not fully funded through other City fees or funds; provided, however, that if the projected time schedule exceeds one year, then the estimated budget shall be prepared for the initial 12-month period only, and the estimated budgets for any subsequent 12-month time periods shall be prepared prior to the end of the prior 12-month period.

The Director shall also prepare a report for the Commission and Board describing the application, the anticipated public benefits listed in the application pursuant to Section 56.4(b), and the projected time schedule for development agreement negotiations.

(b) **Commission and Board of Supervisors Consideration.** The Commission shall recommend to the Board of Supervisors that a fee be imposed of a specified amount after reviewing the cost estimate prepared by the Director and conducting a public hearing pursuant to Section 56.4(c). If the Board of Supervisors approves the fee amount by resolution, the fee shall be paid within 30 days after the effective date of the resolution. The fee shall be paid in a single installment or, at the discretion of the Director, in four equal installments, payable periodically over the estimated time frame for which the estimated budget has been prepared, with the first installment due within 30 days after the effective date of the fee resolution.

(c) **Deposit.** The applicant/developer may prepay up to 50 percent of the amount of the fee (as calculated in the Director's estimated budget) into a Development Agreement Fund established for that purpose to enable the affected City Departments and agencies to begin work on the application. Such funds shall be deemed appropriated for the purposes identified in the cost estimate, and shall be credited against the final fee amount specified in the fee resolution if such resolution is ultimately adopted by the Board of Supervisors. If the Board fails to adopt such fee resolution, then the Controller shall return any prepaid funds remaining unexpended or unobligated to the applicant/developer. If the Board approves a fee amount which is less than the amount which the applicant/developer prepaid, then the Controller shall return that portion of the difference between the fee amount and the prepaid funds which remains unexpended or unobligated to the applicant/developer.

(d) **Development Agreement Fund.** There is hereby created a Development Agreement Fund wherein all funds received under the provisions of this section shall be deposited. All expenditures from the Fund shall be for purposes of reviewing the application for, or proposed material modification to, a development agreement and preparing the documents necessary to the approval of the development agreement, or a material modification thereto. Up to 50 percent of the annual cost estimate is hereby deemed appropriated for such purposes if the applicant/developer chooses to prepay such amount pursuant to Subsection (c) above. All other funds are subject to the budget and fiscal powers of the Board of Supervisors. Interest earned on such amounts deposited in said Fund shall accrue to the Fund for the purposes set forth herein. Upon the execution of a

development agreement, or withdrawal by an applicant/developer of its application, any unexpended or unobligated portion of the fee paid by the applicant/developer shall be returned to the applicant/developer.

(e) **Waiver for Affordable Housing.** The Board of Supervisors may, by resolution, waive all or a portion of the fee required pursuant to this section for affordable housing developments, as that term is defined in Section 56.3, only if it finds that such waiver is necessary to achieve such affordable housing development.

(f) **Other Fees.** Payment of fees charged under this section does not waive the fee requirements of other ordinances. The fee provisions set forth herein are not intended to address fees or funding for parties to collateral agreements.

(g) **Not Applicable to Rental Housing With On-Site Affordable Housing Units.** The hearings and fee required pursuant to this section shall not apply to development agreements entered into with project sponsors of rental housing developments with on-site affordable housing units as that term is defined in Section 56.3(j) if the provision of on-site affordable housing units is the primary purpose of the Development Agreement.

(Added by Ord. 372-88, App. 8/10/88; Ord. 312, File No. 100046, App. 12/23/2010)