

PUBLIC IMPROVEMENT AGREEMENT

(MISSION ROCK - PHASE 1)

This PUBLIC IMPROVEMENT AGREEMENT (MISSION ROCK - PHASE 1) (this “**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and between the City and County of San Francisco, a municipal corporation of the State of California (“**City**”) acting by and through its Department of Public Works (“**Public Works**”), and the City acting by and through the San Francisco Port Commission (“**Port**”), and Mission Rock Horizontal Sub (Phase 1) LLC, a Delaware limited liability company (“**Subdivider**”).

RECITALS

A. The Port and Subdivider are parties to that certain Disposition and Development Agreement dated as of August 15, 2018, and recorded in the Official Records of the City and County of San Francisco (the “**Official Records**”) on August 17, 2018, as Document No. 2018-K656938 (as the same may be amended from time to time, the “**DDA**”). The DDA provides for a long-term master ground lease of development lots between the Port and the Subdivider and its assigns as lessee.

B. Pursuant to that certain Development Agreement dated as of August 15, 2018, by and between Subdivider and the City and recorded in the Official Records on March 3, 2017 as Document No. K416604-00 (the “**DA**”), Subdivider and the Port are engaged in subdividing the property that is subject to proposed “Final Map No. 9443” (“**Final Map**”) consisting of approximately 21.49 acres, as shown therein (“**Property**”).

C. A tentative subdivision map, entitled “Tentative Map, Seawall Lot 337 / Mission Rock Project” for condominium and other purposes (“**Tentative Map**”) for the proposed subdivision of the Property was approved by the Department of Public Works (“**Public Works**”) Director (“**Director**” with references to Director also including the Director’s designee where authorized by law), acting as the advisory agency for purposes of the Subdivision Map Act and the San Francisco Subdivision Code (“**Advisory Agency**”), subject to certain requirements and

conditions contained in the Conditions of Approval set forth in Public Works Order No. 202,368 dated December 13, 2019 (“**Conditions of Approval**”).

D. Pursuant to the San Francisco Subdivision Code (“**Code**”) and the San Francisco Subdivision Regulations (“**Subdivision Regulations**”), the Tentative Map, and the Director’s Conditions of Approval, the Subdivider has made irrevocable offers of improvements for improvements located within Lots B, D, E, F, and G (“**Street and Utilities Lots**”), as shown on Final Map 9443, which Street and Utilities Lots will be dedicated for public street and utilities use. The Property, including the Street and Utilities Lots and the Open Space Lots (as defined below) is owned in fee title by the City, by and through the Port and subject to the trust.

E. Pursuant to the DDA, Subdivider is obligated to construct horizontal infrastructure and public improvements on the Street and Utilities Lots. Subdivider is also obligated to build open space improvements on Lots A, C and H (“**Open Space Lots**”). The improvements in the Open Space Lots will be offered for public dedication. The infrastructure and public improvements contemplated for the Property are described in the Mission Rock Infrastructure Plan (the “**Infrastructure Plan**”) attached to the DDA and as may be amended from time to time, and the Tentative and Final Maps. Such public improvements are more particularly described in those certain improvement plans identified in Exhibits A-1 and A-2 (as such plans are revised from time to time, the “**Plans and Specifications**”). The Plans and Specifications provide for the construction, installation, and completion of the public improvements identified therein (the “**Mission Rock Infrastructure**”). Certain portions of the Mission Rock Infrastructure will be offered for dedication to, and may be accepted by, the City (“**City Improvements**”) and other portions of the Mission Rock Infrastructure will be offered for dedication to, and may be accepted by, the Port (“**Port Improvements**”). The City Improvements and the Port Improvements are described in Exhibit B. The estimated costs of completing the Mission Rock Infrastructure are described in Exhibit C hereto (the “**Estimated Costs**”). Copies of Exhibits A, B, and C are on file with Public Works.

F. Public Works Order No. 202,297 granted certain exceptions to the Code and Subdivision Regulations pertaining to design and construction of the Mission Rock Infrastructure as defined below.

G. Subdivider proposes to utilize lightweight cellular concrete (“LCC”) to construct a portion of the Mission Rock Infrastructure. The Conditions of Approval include specific requirements applicable to the construction, use, and maintenance of LCC and the “**LCC Infrastructure**,” as defined in the Conditions of Approval, to mean the LCC and the at-grade and subsurface physical improvements and utility facilities to be constructed within parks, open space, and right-of-ways as part of the Project, including but not limited to improvements at interfaces between existing right-of-ways and new right-of-ways containing LCC, and at interfaces between LCC and fronting or adjacent lots. Pursuant to Public Works Order No. [_____], the Director granted the deferral of certain Conditions of Approval including those related to the proposed use of LCC. As of the date of the Effective Date of this Agreement and for the reasons specified in Public Works Order No. _____, the City Engineer has not adopted “**Approved Criteria**,” as defined in the Conditions of Approval. In addition to other outstanding analysis related to LCC, the adoption of Approved Criteria and the City’s subsequent issuance of a street improvement permit are conditions precedent to Subdivider’s ability to install LCC Infrastructure.

H. The Port, Public Works, the San Francisco Public Utilities Commission (“SFPUC”), the San Francisco Municipal Transportation Agency (“SFMTA”), and the San Francisco Fire Department (“SFFD”) entered into a Memorandum of Understanding Regarding Jurisdiction and Maintenance of Public Improvements for the Mission Rock Development Project dated _____ (“MOU”), which identifies those parties’ respective jurisdictional, acceptance, ownership, permitting, liability, and maintenance responsibilities as to public improvements on Port lands, including the Property. This Agreement implements the MOU as to the property interests and improvements to be dedicated in connection with the Final Map.

I. Consistent with the Sanitary Sewer System Master Plan dated December 4, 2019, the Subdivider proposes a combined Water Treatment and Recycling System (WTRS) plant and Sanitary Sewer Pump Station (SSPS) to be co-located within a private development building located on Lot 2 as shown on the Final Map. This combined facility is needed to comply with Health Code Article 12C on a district scale and to avoid seeking variances from the SFPUC from its regulatory standards, respectively. The combined facility has not been permitted as of the

Effective Date, however it is needed for the City Improvements downstream from it to be accepted.

J. The Code provides that before a final subdivision map is approved by the City, the Subdivider shall have either (i) installed and completed all of the public improvements required by the City and detailed in the plans and specifications approved by the Director, or (ii) entered into an agreement with the City to install and complete, free of liens, all such public improvements within a definite period of time and provided improvement securities to secure satisfactory completion of the public improvements.

K. The City, the Subdivider, and the Port desire to enter into this Agreement to permit the approval and recordation of the Final Map by the City (including the dedications contained therein), to implement the Conditions of Approval (except as otherwise provided herein), and to simultaneously satisfy the security provisions of the Subdivision Map Act and the Code.

L. Except as specifically defined herein, capitalized terms shall have the meaning given in (i) the Code, (ii) the DA, (iii) the DDA, (iv) the Subdivision Regulations, and (v) the Plans and Specifications.

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

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

2. Subdivider's Obligations.

(a) Mission Rock Infrastructure. Subdivider shall, in good and workmanlike manner, furnish all necessary materials and complete the Mission Rock Infrastructure in conformity with the Infrastructure Plan and the Plans and Specifications as described in Exhibits A-1 and A-2, and to the satisfaction and approval of the Director.

(b) Completion. Subdivider shall complete the Mission Rock Infrastructure in accordance with Section 6(a) below on or within three (3) years following the recordation of the

Final Map. The period of time provided in this condition may be extended upon application by Subdivider and approval by the Director pursuant to Section 4(b) below, or may be extended by operation of Section 10 below. In reviewing such application for an extension of time, the Director shall consider reasonable construction, access, and storage requirements for each adjacent project and subsequent projects.

(c) Other Required Documentation.

(i) Prior to the Director's submittal of this Agreement, and the Final Map to the City's Board of Supervisors ("**Board of Supervisors**"), Subdivider shall provide executed and recorded copies of all the documents, agreements, and notices required in Exhibit D, unless deferred by the Director, in writing, until no later than the time of a request for a Notice of Completion, pursuant to Subsection 6(a).

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

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

agreements or grant deeds or modifying existing easements or grant deeds consistent with the Conditions of Approval.

3. Improvement Security.

(a) Security for Mission Rock Infrastructure. Subdivider has furnished and delivered to the Director bonds, in favor of the City, and which are attached as Exhibits H-1 and H-2 and approved by the City Attorney, from an issuer approved by the Director, securing the installation and completion of the Mission Rock Infrastructure proposed as of the Effective Date, as follows (collectively the "**Security**"):

(i) Performance bonds in the amount of Twenty-Nine Million Six Hundred Twenty-Seven Thousand Two Hundred Twenty-One Dollars (\$29,627,221) (100% of the estimated cost of completion, construction, and installation of the Mission Rock Infrastructure as determined by the Director) to secure the satisfactory performance of Subdivider's obligations (Exhibit H-1); and

(ii) A payment bond or other acceptable security in the amount of Fourteen Million Eight Hundred Thirteen Thousand Six Hundred Ten Dollars and Fifty Cents (\$14,813,610.50) (50% of the estimated cost of completion of the Mission Rock Infrastructure as determined by the Director) as guarantee of payment for the labor, materials, equipment, and services required for the Mission Rock Infrastructure (Exhibit H-2).

(iii) Monument bonds in the amount of Six Thousand Eight Hundred Dollars (\$6,800), total, for seventeen monuments, representing 100% of the cost of installation of the monuments as guarantee of payment for the labor, materials, equipment, and services required for the Mission Rock Required Monuments (Exhibit H-3).

(b) Other Acceptable Security. In lieu of providing any of the Security described in Subsection 3(a), Subdivider may, subject to the approval of the Director, provide a deposit or other security as described in Section 66499 of the Government Code.

(c) Use of Security. If the Mission Rock Infrastructure is not completed within the time periods specified in Subsection 2(b) and such period is not extended by the City

or as otherwise provided under this Agreement, or Subdivider has not satisfactorily corrected all deficiencies during the applicable warranty period, as specified below in Section 8, the Security (as to the Initial Warranty) and the corporate guaranty (as to the Extended Warranty) may, by resolution of the Board of Supervisors, be used by the City for completion of the Mission Rock Infrastructure in accordance with the Plans and Specifications and for correction of any such deficiencies.

4. Construction of Mission Rock Infrastructure and Port Improvements.

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

(b) Extensions. The Subdivider may request an extension of the time period specified in Subsection 2(b) for completion of the Mission Rock Infrastructure by written request to the Director and written notification to the Port Executive Director. A request shall state adequate evidence to justify the extension and shall be made upon Subdivider's determination that it cannot reasonably meet the deadline in the time remaining for completion. The Director may request additional information, and shall in good faith attempt to determine within thirty (30) days of the request whether to grant an extension of time. The Director's failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The time for completion additionally shall be automatically extended for the number of days past thirty (30) during which a request for an extension is pending determination by the Director, as well as during any period of Excusable Delay as described in Subsection 10. The Director shall not unreasonably withhold a request for an extension. The Director may reasonably condition an extension subject to the terms of this Agreement and the conditions provided in the Code, including execution of an extension agreement and the extension of any

security. No extension approved hereunder shall limit or relieve a surety's liability, or provide an extension on any future obligation under this Agreement or the DA (except as expressly stated in the approved extension).

(c) Revisions to Plans and Specifications. Requests by the Subdivider for revisions, modifications, or amendments to the approved Plans and Specifications (each a "**Plan Revision**") shall be submitted in writing to the Director (with a copy to the Director's designee). Subdivider shall not commence construction to implement a proposed Plan Revision without approval by Public Works and until revised plans and Security corresponding to the revised construction cost estimates ("**Replacement Security**") have been received and approved by the Director (or the Director's designee) and any conforming amendments to this Agreement that the Director or Port deems necessary have been made, including ensuring that this Agreement is consistent with subsequent City actions regarding Section 4(d).

(i) Any Infrastructure Plan amendments or other related documentation required for a Plan Revision shall be processed with reasonable promptness, and approval of the Plan Revision shall not be deemed final until the amendment or other documentation necessary to implement the Plan Revision has been completed.

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

(d) Subsequent Discretionary Approval Regarding LCC Infrastructure. Condition of Approval No. 8 of the Tentative Map ("**Condition 8**") sets forth conditions necessary to authorize the use of LCC and establishes procedures for the City's evaluation of the potential use of LCC as part of a site grading strategy for the Project. Subdivider has submitted proposed LCC Infrastructure Designs (as defined in Order No. 202,368) for review by the City and a Technical Advisory Panel convened to produce a Technical Review Report (as defined in Order No. 202,368) intended to demonstrate the reasonableness and technical merit of the LCC Infrastructure Designs. The City Engineer and affected City agencies are currently evaluating

the Technical Review Report and the results of the LCC Pilot (as defined in Order No. 202,368). The City's review must be completed, and Approved Criteria must be adopted through a subsequent Public Works Order, as a condition to Subdivider's constructing LCC. Compliance with Condition 8 was deferred pursuant to Public Works Order No. _____. The Director's grant of the deferral of Condition 8 enables the City Engineer to retain the discretion to adopt Approved Criteria or to authorize the use of LCC after the Final Map is recorded and prior to any authorization or permit to construct LCC. This exception will allow the City to continue its independent technical review of proposed LCC infrastructure without unnecessarily delaying the Final Map. LCC Infrastructure may not be implemented until the City Engineer is satisfied that the "Technical Review Report" (as defined in the Conditions of Approval) and any addenda thereto, demonstrate the reasonableness and technical merit of LCC, and the City Engineer adopts a Public Works Order memorializing the Approved Criteria. Subdivider acknowledges that commencement of LCC Infrastructure as described herein may not proceed unless and until the City Engineer, in the City Engineer's discretion, adopts the Approved Criteria pursuant to a subsequent Public Works Order and the City issues all necessary permits and authorizations. Further, under Condition 8, the Board of Supervisors is required to address the use, excavation, and maintenance of LCC as part of amendments to the Public Works and Port Codes. The Approved Criteria will inform the content of any amendments to the Codes and/or regulations. Any proposed amendments relating to the use of LCC shall be presented to the Port Commission and the Board of Supervisors prior to the Port and Board of Supervisors actions to accept the Mission Rock Infrastructure for public use in accordance with Section 6(d) of this Agreement.

5. Release of Security. The Security, or any portions thereof, not required to secure completion of Subdivider's obligation for construction or installation of the Mission Rock Infrastructure, to satisfy claims by contractors, subcontractors, and/or persons furnishing materials or equipment, or for setting monuments set forth on the Final Map, shall be released to the Subdivider, or its successors in interest, or reduced, as follows:

(a) Release of Security Upon Notice of Completion. Upon the Director's issuance of a Notice of Completion, in accordance with Section 6(a), for a portion of the Mission Rock Infrastructure, the Security shall be reduced as to that portion consistent with the procedures in the Subdivision Code and the Subdivision Regulations. As to that portion, the

Security remaining following such reduction is referred to herein as the “**Remaining Security**,” which term shall also refer to all Security remaining after any release under this Subsection following the Director’s issuance of a Notice of Completion for the final portion of Mission Rock Infrastructure. Subdivider’s warranty obligations shall be as set forth in Section 8 below, and in no event shall the Remaining Security be reduced below the amount necessary to secure Subdivider’s obligations in Section 8.

(b) Partial Release of Security. Consistent with Section 66499.7 of the Government Code and procedures in the Subdivision Code and the Subdivision Regulations, the Security may be reduced in conjunction with the completion of any portion of the Mission Rock Infrastructure by an amount determined by the Director that equals the actual cost of the completed portion of the Mission Rock Infrastructure, subject to Subdivider’s obligations in Section 8 below. Prior to the date that the conditions set forth in Section 5(c) are satisfied, in no event shall the amount of the Security be reduced below the greater of (i) the amount required to guarantee the completion of the remaining portion of the Mission Rock Infrastructure and any other obligation imposed by the Subdivision Map Act, the Code, this Agreement, the Street Improvement Permit, or any other agreement relating to the completion of the Mission Rock Infrastructure; or (ii) ten percent (10%) of the original amount of the Security.

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

(d) Two (2) years following the date of issuance of the Notice of Completion for Lots B, D, E, F, G and I of the Final Map or, with respect to any specific claim of defects or deficiency in Mission Rock Infrastructure after issuance of the Notice of Completion, one (1) year following the date that any such defect or deficiency which the Director identified in accordance with Subsection 8(a) has been corrected or waived in writing by the Director; and the Clerk of the Board of Supervisors (or the Clerk’s designee) certifies that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Mission Rock Infrastructure have been filed against the City, all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security approved by the Director (or the Director’s designee).

6. Completion and Acceptance.

(a) Director's Inspection of City Improvements. No less than ninety (90) days prior to the date that Subdivider intends to request the Director issue a Notice of Completion, Subdivider shall make a written request to the Director of the Subdivider's intent to initiate the Notice of Completion process ("**Letter of Intent to Request Notice of Completion**"). If the Subdivider intends to request the last remaining Notice of Completion for the Phase ("**Final Notice of Completion**") and initiate the commencement of the Initial Warranty period, the Letter of Intent to Request Notice of Completion shall expressly state Subdivider's intent to initiate the process for receiving a Final Notice of Completion and Subdivider shall provide any and all materials required to obtain a Notice of Completion and a list of all Notices of Completion issued to date. The Director shall initiate the inspection of improvements upon receiving a written request from the Subdivider for a "**Notice of Completion,**" as described in the Code, or a Final Notice of Completion, as applicable, accompanied with any and all materials that are required under Subsection 2(c)(iii) related to the Notice of Completion along with any other materials for which the Director authorized deferred submittal in writing at the time of approval of this Agreement. If the Subdivider fails to submit a Letter of Intent to Request Notice of Completion, the Director need not consider the Subdivider's request for the Director's issuance of a Notice of Completion until such a Letter of Intent to Request Notice of Completion is submitted to the Director and ninety (90) days have passed from the submission of the Letter; provided, however, that the Director, in his or her discretion, may agree in writing to a period of less than ninety (90) days from receipt of the Letter to consider issuance of a Notice of Completion. If the Director determines that the Mission Rock Infrastructure has not been completed or does not satisfy the above requirements, Director shall notify Subdivider of such determination together with a statement setting forth with particularity the basis for that determination. If the Director determines that the Mission Rock Infrastructure has been completed in accordance with the approved Plans and Specifications and is ready for its intended use, the Director shall issue the Notice of Completion.

(b) Inspection of Port Improvements. The Chief Harbor Engineer, or the Director on behalf of the Chief Harbor Engineer, shall inspect Port Improvements using the same procedures in subsection (a) above.

(c) Acceptance of Mission Rock Infrastructure. The City effectuates “**Acceptance**” of the Mission Rock Infrastructure, or portion thereof, for public use and maintenance upon the occurrence of all of the following:

(i) The Director, or Chief Harbor Engineer, has issued a Notice of Completion for the City Improvements or Port Improvements, respectively, in accordance with Subsection 6(a);

(ii) The Subdivider submits a written request to the Director to initiate acceptance legislation before the Board of Supervisors or other action appropriate for acceptance of the subject Mission Rock Infrastructure. Such submission shall include any and all materials for which the Director authorized deferral under Subsection 2(c), and any other materials that the Director or Port Director deems necessary to provide the required authorizations and certifications to the Port Commission and Board of Supervisors as part of the acceptance legislation;

(iii) For Port Improvements, the Subdivider shall also request the Port Director to initiate any appropriate action by the Port Commission to: accept the Port Improvements, or portion thereof; dedicate the Port Improvements for public use; and assume or allocate maintenance responsibility for the Port Improvements. The Port will accept Port Improvements pursuant to the procedures described in Section 14.7 of the DDA.

Following action by the Port Commission, if any, the Board of Supervisors, by ordinance or other appropriate action, accepts the Mission Rock Infrastructure, or portion thereof, and dedicates it for public use and assumes or allocates maintenance responsibilities for the Mission Rock Infrastructure in accordance with the provisions of San Francisco Administrative Code Section 1.52 and Subdivider’s maintenance obligations under and Subsection 7(b) of this Agreement.

(d) Offers of Dedication. The owner’s and Subdivider’s statements of the Final Map include or shall include certain irrevocable offers of dedication of improvements and acknowledgement of certain utility rights. In addition, the offers of dedication of improvements shall be made by separate instrument(s). The Board of Supervisors shall accept, conditionally

accept, or reject such offers. The Board of Supervisors shall also by ordinance accept, conditionally accept, or reject for public right-of-way and utility purposes the Mission Rock Infrastructure in accordance with Subsection 6(b). Upon the Director's issuance of a Notice of Completion for the Mission Rock Infrastructure, or portion thereof, in accordance with Section 6(a) of this Agreement, the Board of Supervisors shall by ordinance or other appropriate action accept, conditionally accept, or reject such offers.

(e) Dedication. In addition to accepting improvements, the City and Port shall dedicate the Mission Rock Infrastructure to public use and shall designate them for their appropriate public uses.

7. Subdivider's Maintenance Responsibility.

(a) General Maintenance and Liability Prior to Acceptance. Prior to Acceptance, Subdivider shall be responsible for the maintenance and repair of the Mission Rock Infrastructure, and liability regarding the same, consistent with the Subdivision Regulations. Subdivider shall provide access to, and use of, the Mission Rock Infrastructure prior to Acceptance to the extent required by Section 12.2 of the Master Lease.

(b) Maintenance and Liability Following Acceptance. Following Acceptance, and subject to Subsection 7(c) and Section 8, City and Port shall assume the responsibility of operation, maintenance, and liability of the Mission Rock Infrastructure, unless otherwise provided. City shall indemnify Subdivider and the officers, agents and employees of each of them from, and if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims by third parties ("**Losses**") to the extent first arising from and after City's Acceptance of any applicable portion of the Mission Rock Infrastructure, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of the Subdivider, or a party for whom Subdivider is liable, and except for losses due to a Failure (as defined in the Conditions of Approval) of LCC during the Initial Warranty Period or the Extended Warranty Period as defined in Subsections 8(b) and 8(c), respectively. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible for the repair, replacement, restoration, or maintenance of the Mission Rock

Infrastructure damaged by the actions of third parties following the City's Acceptance of such Mission Rock Infrastructure.

(c) Port Maintained Public Infrastructure. The Mission Rock Infrastructure includes the public infrastructure and utility facilities for which the City may accept ownership but for which the Port may contract to accept obligations for maintenance and liability ("**Port-Maintained City Infrastructure**"). A master encroachment permit will set forth responsibility for maintaining the Port-Maintained Public Infrastructure ("Master Encroachment Permit"). Notwithstanding the foregoing, Subdivider or its successor in interest shall be responsible for the Port-Maintained City Infrastructure until such time as (i) the City issues a Master Encroachment Permit as described by this Section 7(c) and (ii) the Board of Supervisors accepts the Port-Maintained City Infrastructure. Nothing in this Section 7(c) shall be interpreted to modify any fronting property owner's responsibility pursuant to Public Works Code Section 706.

(d) Protection of Mission Rock Infrastructure. In order to protect the Mission Rock Infrastructure from damage until such time as the applicable Mission Rock Infrastructure, or portion thereof, is Accepted, Subdivider may erect a construction fence or other physical barrier around areas under construction, to be constructed in the future, or constructed but not Accepted, provided that Subdivider has procured all necessary permits and complied with all applicable laws. However, no construction fence or other physical barrier may be built or maintained if the Director determines that a construction fence or other physical barrier adversely affects public health or safety by restricting the ingress and egress of the public to and from a public right-of-way.

8. Warranties

(a) Acceptance Does Not Constitute Waiver of Warranties. Acceptance of the Mission Rock Infrastructure by the City or the Port shall not constitute a waiver of any defects covered by any applicable warranty under this Section 8. Subdivider covenants that all Mission Rock Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily during the applicable warranty period, described further below, provided that no warranty period shall commence until the date of issuance of the last Notice of Completion for all Mission Rock Infrastructure subject to this agreement, provided

further that the warranty period for plant materials and trees planted as part of the Mission Rock Infrastructure shall not commence until the Director receives a certification from the City's Construction Manager that a plant establishment period set in accordance with the Plans and Specifications has passed. During the applicable warranty period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director, or the Director's designee, that the work be done ("**Notice of Warranty Work**"), inspect, correct, repair or replace any defects in the Mission Rock Infrastructure at its own expense, subject to Subsection 8(c)(ii) with respect to the Extended Warranty. Should Subdivider fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or replacement be made before Subdivider can be notified (or prior to Subdivider's ability to respond after notice), the City may, at its option, upon notice to Subdivider, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Subdivider shall reimburse the City for the actual cost thereof. During the applicable warranty period, the City shall hold the Subdivider's Security, reduced as described in Section 5 (as applicable to the Initial Warranty Period), to secure performance of Subdivider's foregoing warranty obligations. Subdivider's responsibility during the warranty period shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Mission Rock Infrastructure by the City, or any agent or agency of either. Subsections 8(b) and 8(c) shall not become operative until the City Engineer has adopted the Approved Criteria and the City has issued a street improvement permit for LCC Infrastructure.

(b) Initial Warranty.

Condition No. 8.f.i of the Conditions of Approval states as follows:

Subdivider shall provide an "Initial Warranty" that covers the failure of the LCC Infrastructure to meet the Approved Criteria and any defects in materials or workmanship (each failure or defect a "Failure") of the LCC Infrastructure for a period of two (2) years from the date of issuance of the last Notice of Completion for all LCC Infrastructure for the applicable Phase.

Based on the foregoing, Subdivider covenants that all Mission Rock Infrastructure constructed or installed by Subdivider shall be free from “Failure,” as defined in the Conditions of Approval for a period of two years from the date of issuance of the last Notice of Completion for all LCC Infrastructure for the applicable Phase (the “**Initial Warranty Period**”). The Initial Warranty Period shall not commence until Subdivider has requested a Final Notice of Completion pursuant to Section 6(a), and the Director has issued such Final Notice of Completion. Following the Initial Warranty Period, consistent with the Conditions of Approval, Subdivider shall provide an Extended Warranty against Failure for the duration of Extended Warranty Period, as defined in the Conditions of Approval and set forth in Section 8(c) below.

(c) Extended Warranty.

(i) Scope of the Extended Warranty. Condition No. 8.f.ii of the Conditions of Approval states:

Subdivider shall provide an “Extended Warranty” that covers all Failures of the LCC Infrastructure. Excluding any CFD funds, IFD funds, or insurance funds provided to repair the LCC Infrastructure due to insurable events, the Subdivider’s liability under the Extended Warranty shall be in amounts equal to 10% of the total cost of materials and installation of the LCC Infrastructure (“Extended Warranty Amount”) which shall be determined by reference to the greater of the approved cost estimates in the public improvement agreement or cost estimates for relevant LCC Infrastructure in the Phase budget approved by the Port Commission. The Extended Warranty shall extend for a period of three (3) years from the date of expiration of the Initial Warranty provided by Subdivider consistent with Section 8.f.i. (“Extended Warranty Period”).

Based on the foregoing, Subdivider covenants that all Mission Rock Infrastructure constructed or installed by Subdivider shall be free from Failure for the duration of the “**Extended Warranty Period**,” as defined in the Conditions of Approval. The Extended Warranty shall terminate at the end of the Extended Warranty Period, except that if City has delivered a Notice of Warranty Work with respect to any Failure identified by City during the Extended Warranty Period, the Subdivider’s obligation to correct any such Failure identified in the Notice of Warranty Work shall continue until such Failure has been corrected.

(ii) Subdivider's Maximum Liability. Notwithstanding any other provision of this Agreement, during the Extended Warranty Period, Subdivider's maximum financial obligation under this Subsection 8(c) shall not exceed Five Million Two Hundred Thousand Dollars (\$5,200,000) in the aggregate as provided in the Conditions of Approval. The following amounts (excluding any CFD funds, IFD funds, or insurance funds provided to repair LCC Infrastructure due to insurable events or to reimburse such repair costs) shall be applied against this maximum financial obligation: (i) any out-of-pocket costs incurred by Subdivider or any Obligor (as defined in Subsection 8(c)(iii)) related to correcting any covered Failure of the Mission Rock Infrastructure during the Extended Warranty Period and (ii) any out-of-pocket payments from Subdivider or any Obligor to the City to reimburse City for its costs to correct any Failure of the Mission Rock Infrastructure during the Extended Warranty Period ("**Extended Warranty Amount**"). In the event the Mission Rock Infrastructure constructed or installed by Subdivider is not free from Failure during the Extended Warranty Period, the City, in its sole discretion, may direct how the funds up to the Extended Warranty Amount shall be allocated, including as a contribution(s) toward a solution that uses funds from both the Extended Warranty and any other funds that are separate from and excluded from the Extended Warranty Amount, such as CFD funds, IFD funds, or insurance funds.

(iii) Security for Extended Warranty. Subdivider shall provide a corporate guaranty substantially consistent with the form of Exhibit I hereto to secure Subdivider's obligations under the Extended Warranty for the duration of the Extended Warranty Period, subject to the Extended Warranty Amount. Any obligor providing such guaranty (an "**Obligor**") shall satisfy the "**Net Worth Requirement**" set forth in Exhibit I. The obligation to guaranty the Extended Warranty shall be offset equivalent to the amount of any Phase Security held by the Port under Section 16.3 of the DDA, and which also secures Subdivider's obligations to remedy Failure of the Mission Rock Infrastructure.

(iv) Insurance. Exhibit J hereto describes Subdivider's "**Insurance Program**." Subdivider shall maintain insurance consistent with forms of insurance, minimum coverage amounts, and minimum coverage periods described in the Insurance Program. In the event that any Failure of the Mission Rock Infrastructure occurs during the Extended Warranty Period, and such Failure is an insurable event under the Insurance Program, Subdivider shall

make a claim against the subject policy or policies and use any recovered funds to address the Failure. Alternatively, if City is an additional named insured on the subject policy or policies the City may direct Subdivider to file a claim for the cost of associated repairs.

(d) Indemnity. For purposes of this Section 8, any capitalized term shall be defined consistent with the DA. Consistent with the DA, the indemnity provided in Section 4.4 of the DA shall apply to work under this Agreement. DA Section 4.4 is reproduced here and made a part of this Agreement; such incorporation shall not limit, replace or alter the effect of DA Section 4.4. In the event of any difference between the text of DA Section 4.4 and the reproduction herein, the DA shall govern.

9. Indemnification of City.

(a) Failure to comply with DA Requirements. To the extent provided under the DDA, Subdivider agrees to indemnify the City and the Port from Losses arising directly or indirectly from:

- (i) any third-party claim arising from a default under the DA by Subdivider;
- (ii) Subdivider's failure to comply with any Project Approval or Other Regulatory Approval;
- (iii) any dispute between Subdivider and its contractors or subcontractors relating to construction of any part of the Project; and
- (iv) any dispute between Subdivider 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, Subdivider 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 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 the 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. Subdivider'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 by City Parties or the breach by any City Party under a Transaction Document.

(d) Limitation on City Liability. Neither the City nor the Port shall be an insurer or surety for the design or construction of the Mission Rock Infrastructure pursuant to the approved Plans and Specifications, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Mission Rock Infrastructure as specified in this Agreement, except as may arise due to the negligence or willful acts or omissions of the City.

10. Excusable Delay. All time periods in this Agreement shall be extended for Excusable Delay as described in Section 4 of the DDA, which is reproduced below. In the event of any difference between the text of DDA Section 4 and the reproduction herein, the DDA shall govern.

4.1 Generally

(a) Required Notice.

(i) Except for Environmental Delay and Down Market Delay, the Party claiming Excusable Delay must provide notice to the other Party promptly, and in no case more than 30 days after learning of:

- (1) the Delay Event; or
- (2) a delay in performance caused by the Delay Event that the Noticing Party could not reasonably discover immediately after the Delay Event occurred.

(ii) A notice given under this Section must specify:

- (1) the Delay Event Date;
- (2) the expected period of Excusable Delay; and
- (3) whether the Party claims Excusable Delay for a specific obligation, a Phase, or the Project as a whole.

(iii) The Noticed Party may challenge the existence or length of claimed Excusable Delay by notice to the Noticing Party. The following disputes will be resolved by procedures in DDA **Article 9** (Resolution of Certain Disputes);

- (1) whether an Excusable Delay has occurred;
- (2) whether the Noticing Party gave notice timely; and
- (3) the length of Excusable Delay.

(b) Effect of Excusable Delay. In addition to any other specific provisions of this DDA excusing or delaying a performance date, a Party will not be in default of any specific DDA provision, and performance dates will be extended under procedures in this Article, if an Excusable Delay applies to the specific DDA provision. If a Party's performance is subject to Excusable Delay under this Article, any obligation of the other

Party that is conditioned on the excused or extended performance will be excused or extended to the same extent. Obligations to process Payment Requests under the Acquisition Agreement or make payments under approved Payment Requests are not Time-Sensitive Matters subject to Excusable Delay.

(c) Limits on Excusable Delay. Each extension for Excusable Delay will cause future performance dates for Time-Sensitive Matters specified in the notice to be extended, subject to the following limitations:

(i) If the delay interrupts Developer's ability to start or finish any Developer Construction Obligations, Developer will take appropriate measures to secure and leave the affected property in good and safe condition until construction can start again.

(ii) Excusable Delay will not affect Developer's obligations to:

(1) pay taxes or assessments, if applicable;

(2) maintain in effect Adequate Security or other financial assurances; or

(3) pay Developer Reimbursement Obligations except to the extent payment due dates are tied to completion of Developer Construction Obligations by Excusable Delay.

4.2 Excusable Delay Periods.

All of the following are subject to DDA Section 4.3 (Limits on Excusable Delay Period).

(a) Environmental Delay. Environmental Delay begins on the Delay Event Date. Environmental Delay will end 90 days after the final judgment or other final resolution of the Delay Event.

(b) Down Market Delay. Down Market Delay begins on the Down Market Test Date. Down Market Delay will end on the earlier of:

(i) the Down Market Test Date of a later Down Market Test under DDA Subsection 4.4(e) (End of Down Market) indicating that a Down Market has ended; and

(ii) 24 months after a Down Market Test Date indicating that a Down Market exists.

(c) Other Excusable Delays. Other Excusable Delays will begin on the respective Delay Event Date. Subject to DDA Section 4.3 (Limits on Excusable Delay Period), these Excusable Delays will end on the earlier of:

(i) the date specified in the notice or as otherwise determined by agreement or procedures under Article 9 (Resolution of Certain Disputes) and;

(ii) 90 days after the date on which the delay caused by the Delay Event ends.

4.3 Limits on Excusable Delay Period.

(a) Meet and Confer.

(i) The Parties agree to meet and confer in a good faith attempt to agree on measures that will allow the Project to proceed if an Excusable Delay (based on an event of Force Majeure) of longer than one year occurs. The obligation to meet and confer will arise when the Parties reasonably foresee or know that the Delay Event will exceed one year.

(ii) Measures to which the Parties agree at the staff level may be subject to Port Commission and Board of Supervisors approval if the Port Director in her reasonable judgment determines that the changes would require a Material Modification to any of the Transaction Documents. But the Parties' failure to reach agreement under this Subsection will not result in adverse consequences to either Party, except for those caused by Force Majeure.

(b) Maximum Delay. In no event will an Excusable Delay extend the DDA Term by more than 36 months. As specified in DDA Subsection 1.1(b) (Term), the DDA Term will not be extended by Down Market Delay.

4.4 Down Market Delay Procedures

(a) Timing. Developer may request a Down Market Test at any time to determine whether a Down Market exists. Except when market conditions established by a failed Public Offering or by agreement as described in DDA Subsection 7.8(g) (Effect of a Failed Offering), a Down Market Test will be used to determine whether each Party's Time-Sensitive Matters for the Phase will be tolled or otherwise adjusted under this Section. Within 30 days after requesting a Down Market Test, Developer will submit to the Port an updated Phase Proforma and a Down Market Test Budget containing all of the information required under Section 3.3 (Phase Budget), prepared on the assumption that the Current Phase proceeds under then-current market conditions.

(b) Existence of Down Market. A Down Market for a particular Phase will be deemed to be in effect as a result of any of the following:

(i) the sum of Annual Ground Rent projected to be payable to the Port for all Option Parcels in the Current Phase under the Down Market Test Budget is less than the sum of the Reserve Rent Allocations for the same Option Parcels;

(ii) the Down Market Test Budget does not meet the criteria for approval of a Phase Budget under DDA Subsection 3.5(e) (Criteria for Approval);

(iii) a Down Market Delay is deemed to be in effect under Subsection 7.7(c) (Down Market Before Closing); or

(iv) a Public Offering fails as described in DDA Subsection 7.8(g) (Effect of Failed Offering).

(c) Appraisal.

(i) Either Party may give notice to the other Party within 10 days after Developer's submission of the Down Market Test Budget under clause (i) or clause (ii) of Subsection 4.4(b) (Existence of Down Market) that the Noticing Party intends to engage a Qualified Appraiser to appraise all Option Parcels in the Phase using procedures described in Section 7.4 (Fair Market Value). The Noticing Party's appraisal instructions will require the appraisal report to include the Rent Conversion Factor for each Option Parcel.

(ii) A Down Market will be deemed to have occurred if the appraisals conducted under clause (i) of this Subsection show that the sum of Annual Ground Rent projected to be payable to the Port for each Option Parcel in the Current Phase is lower than the sum of the Reserve Rent Allocations for the same Option Parcels, taking into account the Parcel DRPs in the Down Market Test Budget.

(d) Effect of Down Market Delay.

(i) During a Down Market as to any Phase, the applicable Outside Dates for Developer's obligations to submit Phase Submittals and to exercise its Option for the Option Parcels in that Phase, and dates by which either Party will perform any other Time-Sensitive Matter will be extended in accordance with Subsection 4.2(b) (Down Market Delay).

(ii) One Party's Excusable Delay in performing a Time-Sensitive Matter may automatically affect the other Party's Time-Sensitive Matters. The following example illustrates the effect of a Down Market on the Option Process.

(1) Developer may request that the Port allow Developer to exercise its Option for an Option Parcel for the sum reported in the Down Market Test.

(2) The Port will not be obligated to convey the affected Option Parcel and may elect in its sole discretion to hold the Option Parcel off the market until the Down Market ends.

(iii) At its sole discretion, Developer may rescind its exercise of an Option for an Option Parcel that has not Closed by the start of the Down Market Delay. Rescission under this Subsection will:

(1) cause the simultaneous, automatic termination of the pertinent vertical DDA;

(2) entitle the pertinent Vertical Developer to a refund of any deposits made into Escrow less fees payable to the Escrow Agent upon cancellation of Escrow; and

(3) not prejudice Developer's right to exercise the Option after the Down Market Delay ends.

(e) End of Down Market. At any time after the first anniversary of the applicable Down Market Test Date, either Party may request another Down Market Test to determine whether the Down Market has ended. Each new Down Market Test indicating the continuing existence of a Down Market will result in a new Down Market Test Date, subject to the 24-month period under Subsection 4.2(b) Down Market Delay).

11. Miscellaneous.

(a) Final Map Recordation. The City, in accordance with the Code, shall record the Final Map with the County Clerk in the Official Records of the City and County of San Francisco promptly upon Board of Supervisors' approval of the Final Map. The City shall notify Subdivider of the time of recordation. In the event the Final Map is not recorded within fifteen (15) days of approval, this Agreement shall be null and void.

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

(c) Developer Extension. All time periods in this Agreement shall be extended for the period of any "**Excusable Delay**" as set forth in Section 4 of the DDA (which is reproduced in Section 10 of this Agreement). In the event of any difference between the text of

DDA Section 4 and the reproduction herein, the DDA as executed shall govern. In the event that Subdivider invokes the Excusable Delay provision, Subdivider shall promptly provide written notice to the Director. The notice required under this Subsection shall identify the nature of the extension and the length of the extension with respect to Subsection 2(b) of this Agreement.

(d) Attorneys' Fees. Should any party hereto institute any action or proceeding in court or other dispute resolution mechanism (“**DRM**”) to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party, court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Subsection 11(d) include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for the City or the Subdivider shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the City's or the Subdivider's in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City, or, in the case of the Subdivider's in-house counsel, as employed by the outside counsel for the Subdivider.

(e) Notices.

(i) A notice or communication under this Agreement by either party to the other (or by or to the Director) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

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

Director of Public Works
City and County of San Francisco
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Infrastructure Task Force

With copies to:

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

San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
Attn: _____
Reference: Mission Rock Project

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

Mission Rock Horizontal Sub (Phase 1), L.L.C.
24 Willie Mays Plaza
San Francisco, CA
Attn: Julian Pancoast

Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Attn: Matthew S. Gray

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

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: Phil Williamson

With a copy to:

Office of the City Attorney
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: Port General Counsel
Reference: Mission Rock Project

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

- (A) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (B) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (C) if approval is being requested, shall be clearly marked "Request for Approval under the Mission Rock Public Improvement Agreement"; and
- (D) if a notice of disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.
 - (ii) Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
 - (iii) Any notice or request for review, consent, or other determination or action by the Director shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: "MISSION ROCK INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED."
- (f) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto (as set forth in the

DDA), and upon such transfer, the Subdivider shall be released from its obligations hereunder. Any assignment of Subdivider's rights and obligations under this Agreement shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the reasonable approval of the Director; provided, however, that if Subdivider assigns its rights under the DDA as "Developer" (as defined therein as it relates to the affected real property), an assignment of this Agreement to the same assignee shall not require the Director's approval so long as: (1) Subdivider provides notice of the intended transfer to the Director within five days of providing any required notice to the Port under the DDA; (2) Subdivider provides to the Director a copy of the executed DDA assignment and assumption (which includes the transfer of rights and obligations under this Agreement); (3) the assignee provides replacement bonds that are consistent with Exhibits H-1 and H-2 in the amount required to secure any remaining obligations; and (4) the assignee provides proof of adequate insurance in the amount previously provided by Subdivider and by an insurer with an equal or better credit rating; and (5) the assignee has obtained all real estate rights and can satisfy all other conditions required to complete the work contemplated by this Agreement.

(g) Development Agreement. The City shall cooperate with the Subdivider consistent with the terms of the DA, including, without limitation, in obtaining applicable approvals required for the construction of the Mission Rock Infrastructure.

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

(i) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Port, the City, and the Subdivider any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the Port, the City, or the Subdivider shall be for the sole and exclusive benefit of the named parties.

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

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

(l) Interpretation of Agreement. Unless otherwise provided in this Agreement or by applicable law, whenever approval, consent or satisfaction is required of the Port, the Subdivider or the City pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Nothing in this Agreement limits the scope of review and certification of completed improvements required to determine that any deficiencies in the required Mission Rock Public Improvements have been corrected, as-built Improvement Plans submitted, and the City Engineer, upon written request from the Subdivider, is authorized to issue a Notice of Completion. Captions used in this Agreement are for convenience or reference only and shall not affect the interpretation or meaning of this Agreement.

This Agreement shall in no way be construed to limit or replace any other obligations or liabilities which the parties may have in the DA or the DDA.

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

13. Recording.

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

(b) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Subdivider's obligations and responsibilities under Sections 2, 7, and 8. This Agreement shall not be interpreted as creating a lien or security interest against any parcel against which it is recorded, or to effect any secured interest now or in the future, as the obligations hereunder are personal to Subdivider and its successors and assigns as may be authorized pursuant to Section 11(f).

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Port, the City, and Subdivider have executed this Agreement in one or more copies as of the date first above written.

SUBDIVIDER:

**MISSION ROCK HORIZONTAL SUB
(PHASE 1), L.L.C.**, a Delaware limited
liability company

By: Seawall Lot 337 Associates, LLC, its
Sole Member


By: Mission Rock Partners, LLC, its Sole
Member

By: TSCE 2007 Mission Rock, L.L.C., Its
Administrative Member

By:

Name:

Its:


Carl D. Shannon
Authorized Signatory

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

State of California)

) ss

County of San Francisco)

On 5/22/2020, before me, Matt G. Miller, a notary public in and for said State, personally appeared Carl S. Shannon, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)



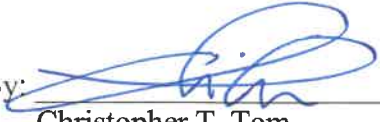
[Signature Pages Continue]

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: Alaric Degrafinried
Its: Acting Public Works Director

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

By: 
Christopher T. Tom
Deputy City Attorney

[Signature Pages Continue]

PORT:

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

By: _____
Katharine E. Petrucione
Acting Executive Director

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

By: _____
Michelle Sexton
Deputy City Attorney

[Signature Pages End]

EXHIBIT A-1

Plans and Specifications

(Street Improvement Permit Application)

Improvement Plans and Specifications prepared by BKF Engineers entitled "Seawall Lot 337 /
Mission Rock Phase 1 On-Site Street Improvement Plans" dated February 3, 2020

EXHIBIT A-2

Plans and Specifications

(Pump Station)

Improvement Plans and Specifications prepared by Jim Geselbracht, PE entitled "Mission Rock Blackwater Treatment Facility," dated December 18, 2019.

EXHIBIT B

City Improvements / Port Improvements

CITY IMPROVEMENTS

1. Lightweight Cellular Concrete (LCC¹) Fill - Lightweight cellular concrete used to raise grades and mitigate consolidation settlement.
2. Permanent LCC Edge (if any) – Protection and Barrier Wall
3. Standard Roadway (pavement, curb and gutter) - City standard roadway including base paving, asphalt concrete wearing surface, curb and gutter (including mountable and street-facing curb and gutter on cycle track separators)
4. Standard Sidewalk Corner - Corner curb returns, curb ramps including the wings, sidewalk area at corners between extensions of the adjacent property lines, sidewalk bulb-outs at corners with extensions of property lines
5. Non-Standard Sidewalk Corners - Non-standard corner curb returns, sidewalk area at corners between extensions of the adjacent property lines, sidewalk bulb-outs at corners within extensions of property lines
6. Non-Standard Sidewalk Corners- Curb ramps including wings within non-standard curb returns/sidewalk corners
7. Sidewalks and Driveways - City Standard Concrete sidewalk throughway and driveways
8. Street Trees - Trees planted within the sidewalk landscape zone, fronting private property. Does not include other landscaping
9. City Standard Trash/Recycling Receptacles - Trash and/or Recycling Receptacles per City Standards
10. Standard Bike Lanes, cycle tracks, or Bike Paths - Class II or Class III bike facilities in the roadway, including pavement and striping; Class I or Class IV Cycle Track bike facilities in the public right-of-way, including pavement, delineators, curbs and gutters facing cycle track, signing, striping, and median separators up to back of curb adjacent to vehicular roadway
11. Standard Bike Racks - SFMTA standard bike racks
12. Traffic Signals - Traffic signal heads, poles, cabinets, conduits and all related appurtenances (excluding street lights)
13. Standard Roadway Signage and Striping - Traffic Routing signage and striping per State and Federal Guidelines, including but not limited to stop signs, speed limit signs, travel lane striping and crosswalk striping
14. Street Lights - SFPUC standard street lights, roadway lighting and pedestrian lighting, including poles, luminaires, pull-boxes and conduit

¹ City's review of proposed use of LCC referenced in Exhibit B is pending.

15. SFPUC Power System - Vaults, conduits, pull-boxes, ground rods, and appurtenances in accordance with SFPUC Rules and Regulations Governing Electrical Service
16. Auxiliary Water Supply System (AWSS) - Permanent pipes, pipe fittings, valves, vaults, above ground structures and infrastructure, pumps, manifolds and hydrants
17. Low Pressure Water System - Permanent pipes, pipe fittings, valves, hydrants, laterals up to and including the meters in accordance with SFPUC regulations
18. Low Pressure Water System in Shared Public Ways - Permanent pipes, pipe fittings, valves, vaults and fire hydrants
19. Sanitary Sewer System downstream of and including intercepting manhole for the private blackwater plant in Tentative Map Lot 2 - Permanent pipes, pipe fittings, manholes and laterals up to face of vertical curb
20. Storm Drain System - Permanent pipes, pipe fittings, manholes, catch basins and laterals up to face of vertical curb; excludes stormwater management facilities
21. Storm Drain Conveyance System in Shared Public Way - Pipes and City standard appurtenant structures, such as drop inlets and manholes
22. Stormwater treatment diversion structure - Stormwater structure that splits treatment flows from larger flows
23. SFPUC Stormwater Non-Compliant Flows Interceptor Facilities - Pipe from diversion structure, interceptor pump station facilities, force main to sewer main, gravity line to sewer main.
24. SFPUC Decentralized Standard Green Stormwater Infrastructure - SFPUC standard stormwater controls, including the treatment system, vegetation, soil media, aggregate matrix, underdrains, internal piping and fittings, overflow structures, conveyance piping appurtenances, curbs/walls, and laterals from facility up to face of vertical curb
25. Flexible Utility Connections for Public Utilities - Flexible utility connections including pipes and appurtenances to accommodate potential differential settlement where public utility on structure interface with public utilities previously built on grade
26. Department of Technology (DT) Facility - Vaults, conduits and pull-boxes for DT fiber-optic network and Public Safety network

PORT IMPROVEMENTS

In Public ROW

1. Perf. Drains for Structural Soils in tree wells
2. Non-Standard Roadway Treatment - Raised intersections; raised crosswalks, pavers, or other non-standard materials in roadway
3. Non-Standard Roadway Treatments in Shared Public Ways - Streets with non-standard paving, including unit pavers in the roadway or decorative paving; non-standard detectable warning pavement; flush curbs; valley gutters
4. Sidewalk Streetlife Zone - Sidewalk streetscape/street furniture zone including pavers, landscape, irrigation, intermediate curbs and mid-block bulb outs
5. Linear Drainage Elements in Shared Public Ways - valley gutters and trench drains
6. Seating- Benches or seating
7. Custom Trash/Recycling Receptacles - Any trash or recycling receptacles which does not meet City standards
8. Bollards - Various types at flush curb conditions or fire access terminus
9. Non-Standard Bike Rack - SFMTA approved non-standard bike rack
10. Non-Standard Roadway Signage - Any additional signage for wayfinding, interpretive, art, etc.
11. Sanitary Sewer System upstream of and including the sanitary sewer force main discharging flows from the private blackwater plant in Lot 2 - Permanent pipes, pipe fittings, manholes and laterals up to face of vertical curb; gravity overflow pipe
12. Storm Drain Laterals in Shared Public Way - Service laterals from main to private property

In Port Open-Space Parcels

1. Lightweight Cellular Concrete (LCC) Fill - Lightweight cellular concrete used to raise grades and mitigate consolidation settlement.
2. Shared Public Way and Bridgeview Street Paseos and China Basin Park Promenade - soil, planting, utilities, pavement, light poles, light fixtures, lighting sub-structures and point-of-connection to power source, ancillary furnishing materials
3. Private water lines and fire hydrants in Port Open Space - Private water line and hydrants, including backflow preventers
4. Private water lines serving parks - Private line, including meter and backflow preventer at edge of ROW, to serve park structures and other potable water needs in parks

Port Accepted Off-Site Infrastructure on Port Property

1. China Basin Park Promenade - LCC, soil, planting, utilities (including lateral services for kiosks), pavement, walls, light poles, light fixtures, lighting sub-structures and point-of-connection to power source, ancillary furnishing materials
2. [UNDER DISCUSSION] Interim Improvements required for functionality of Phased Improvements
 - a. Channel Street geotechnical improvements, grading, landscaping and roadway improvements for temporary access to SPW and Lot A

- b. Geotechnical Improvements, grading and temporary landscaping along the south side of Block F
- c. Geotechnical Improvements, grading and temporary streetscape and roadway improvements south of northern block of Bridgeview St, including a turnaround at the end of the dead-end street
- d. Shotcrete or other protection for exposed LCC along the perimeter of the phase
- e. Concrete or other barriers along the edge of future

EXHIBIT C

ESTIMATED COSTS

Exhibit	Description of Improvements	Estimated Costs
Exhibit A-1	Street Improvement Plans	\$28,788,421
Exhibit A-2	Pump Station Plans	\$838,800

BKF Engineers

Preliminary Engineer's Opinion of Probable Construction Cost

Mission Rock Development Phase 1 Improvements

December 13, 2019
Revised May 20, 2020

By:
BKF Engineers
150 California Street, Suite 600
San Francisco, CA 94111

Client:
Mission Rock Horizontal Sub Phase 1 LLC
One Bush Street Suite 500
San Francisco CA 94104





Introduction

This preliminary engineer's opinion of probable construction costs has been prepared to assess the cost of the proposed infrastructure work at Mission Rock - Phase 1.

The following document were used in preparation of this opinion:

1. Mission Rock Phase 1 Street Improvement Plans dated 02/03/2020.

Preliminary Engineer's Opinion of Probable Construction Cost Notes:

1. This preliminary engineer's opinion of probable construction costs is based on the Mission Rock Development Phase 1 Street Improvement Plans by BKF Engineers, CMG Landscape Architecture, UDCE, and Power Systems Design, dated February 3, 2020.
2. This preliminary engineer's opinion of probable construction costs does not include the Make Ready and Rough Grading permits that are approved separately.
3. This preliminary engineer's opinion of probable construction costs does not include building costs, foundation costs, foundation shoring costs, public park and open space costs, interim finish costs and on-site development parcels costs.
4. This preliminary engineer's opinion of probable construction costs does not include any indirect costs, including but not limited to contingency costs, markups, OH&P, bonds, insurances, and GRT.
5. BKF Engineers makes no warranty, either expressed or implied, that actual costs will not vary from the amounts indicated, and assumes no liability for such variances.
6. This preliminary engineer's opinion of probable construction costs does not include agency development and municipal fees.
7. This preliminary engineer's opinion of probable construction costs does not include consulting, construction staking, general conditions and general contractor fees,
8. Joint trench opinion of probable construction costs have been provided and coordinated by power systems design.
9. This preliminary engineer's opinion of probable construction costs does not include retaining walls for mission rock square and bio-retention planters.
10. This preliminary engineer's opinion of probable construction costs does not include additional costs associated with project phasing.
11. This preliminary engineer's opinion of probable construction cost does not include costs associated with environmental cleanup, soil remediation, and ground improvements.
12. This preliminary engineer's opinion of probable construction costs assumes that flexible service connections will not be required for the building utility services.
13. This preliminary engineer's opinion of probable construction costs does include excavation and off haul for the placement of lightweight cellular concrete.



**MISSION ROCK DEVELOPMENT
PRELIMINARY ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST**

5/20/2020

COSTS BY PHASE

ITEM	DESCRIPTION	PHASE 1
1	EARTHWORK	\$ 9,517,777
2	ROADWAY	\$ 2,388,683
3	STREETSCAPE	\$ 6,607,625
4	LOW PRESSURE WATER	\$ 981,751
5	NON-POTABLE WATER	\$ 337,224
6	STORM DRAIN	\$ 1,380,763
7	SANITARY SEWER	\$ 729,046
8	AUXILIARY WATER SUPPLY SYSTEM (AWSS)	\$ 1,348,600
9	DISTRICT ENERGY	\$ 2,749,000
10	BAY CONDENSER WATER	\$ 223,125
11	TRAFFIC SIGNAL IMPROVEMENTS	\$ 1,000,000
12	JOINT TRENCH	\$ 1,524,827
	SUBTOTAL	\$ 28,788,421



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF EARTHWORK COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
EARTHWORK					
1	FINE GRADING	189,802	SF	\$ 0.63	\$ 119,575.55
2	LANDSCAPE FILL	19,823	CY	\$ 30.00	\$ 594,697.17
3	IMPORT (PERMEABLE LCC)	47,145	CY	\$ 110.00	\$ 5,185,950.00
4	EXCAVATE TO BOTTOM OF LCC	19,363	CY	\$ 15.00	\$ 290,445.00
5	CUT/EXPORT TO CLASS I FACILITY (ASSUME 10%)	1,936	CY	\$ 180.00	\$ 348,534.00
6	CUT/EXPORT TO CLASS II FACILITY (ASSUME 35%)	6,777	CY	\$ 55.00	\$ 372,737.75
7	CUT/EXPORT TO CLASS III FACILITY (ASSUME 55%)	10,650	CY	\$ 50.00	\$ 532,482.50
8	EROSION CONTROL	8.8	AC	\$ 20,000.00	\$ 175,329.90
9	DEWATERING	189,802	SF	\$ 10.00	\$ 1,898,024.65
EARTHWORK TOTAL				PHASE 1 SUBTOTAL	\$ 9,517,776.53



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY.	UNIT	UNIT COST	AMOUNT
ROADWAY					
1	FLUSH CURB	615	LF	\$ 35.00	\$ 21,525.00
2	2" MOUNTABLE CURB	126	LF	\$ 35.00	\$ 4,400.55
3	4" VERTICAL CURB	126	LF	\$ 35.00	\$ 4,400.55
4	6" VERTICAL CURB	395	LF	\$ 40.00	\$ 15,798.80
5	2" GRIND AND OVERLAY	11,572	SF	\$ 2.00	\$ 23,144.80
6	12-INCH CURB AND GUTTER	1,570	LF	\$ 50.00	\$ 78,505.00
7	24-INCH CURB AND GUTTER	505	LF	\$ 70.00	\$ 35,424.90
8	4" PAVED MEDIUM	442	SF	\$ 5.00	\$ 2,210.40
9	VALLEY GUTTER	272	LF	\$ 40.00	\$ 10,898.40
10	CONCRETE VEHICULAR PAVING (4" AC/8" PCC)	16,307	SF	\$ 18.67	\$ 304,402.63
11	CONCRETE VEHICULAR PAVING (4" AC/8" PCC/4" AB) ON-SITE	31,552	SF	\$ 21.63	\$ 682,457.90
12	CONCRETE VEHICULAR PAVING (4" AC/8" PCC/4" AB) ENHANCED FINISH	2,257	SF	\$ 21.63	\$ 48,813.06
13	CONCRETE VEHICULAR PAVING (4" AC/8" PCC/4" AB) MISSION BAY STANDARD	1,854	SF	\$ 21.63	\$ 40,104.17
14	VEHICULAR UNIT PAVERS (PAVERS/8" PCC/4" AB) TYPE A	10,509	SF	\$ 70.30	\$ 738,724.40
15	AC VEHICULAR PAVING (2" AC/8" AB)	9,307	SF	\$ 8.59	\$ 79,967.30
16	SURVEY MONUMENT	17	EA	\$ 400.00	\$ 6,800.00
17	BIKE LANES - ONE 5' LANES PAINTED GREEN (COST PER SF OF STREET)	7,068	SF	\$ 8.00	\$ 56,544.00
18	STREET SIGNS AND STRIPING	2,480	LF	\$ 22.00	\$ 54,560.00
19	BIO-RETENTION WALL (TO BE DESIGNED BY OTHERS)	182	LF	\$	\$
20	PERMANENT PAVEMENT MARKINGS	1	LS	\$ 180,000.00	\$ 180,000.00
ROADWAY SUBTOTAL					\$ 2,388,683.15



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
STREETSCAPE					
1	CONCRETE SIDEWALK PAVING (4" PCC/ 4" AB) ENHANCED FINISH	7,714	SF	\$ 15.00	\$ 115,710.10
2	CONCRETE SIDEWALK PAVING (4" PCC/ 4" AB) MISSION BAY STANDARD	19,320	SF	\$ 15.00	\$ 289,802.96
3	PEDESTRIAN UNIT PAVERS (PAVERS/4" PCC/4" AB) TYPE A	28,769	SF	\$ 53.02	\$ 1,525,467.95
4	PEDESTRIAN UNIT PAVERS (PAVERS/4" PCC/4" AB) TYPE B	1,476	SF	\$ 53.02	\$ 78,248.60
5	STONE SETS FOR TREE WELL SURFACE	259	SF	\$ 50.00	\$ 12,925.00
6	STANDARD DETECTABLE SURFACE PAVING	154	SF	\$ 40.00	\$ 6,160.00
7	ALTERNATIVE DETECTABLE SURFACE PAVING	1,771	SF	\$ 55.00	\$ 97,383.67
8	TACTILE STONE PAVER	371	SF	\$ 68.00	\$ 25,220.18
9	HANDICAP ACCESSIBLE RAMP	30	EA	\$ 21,000.00	\$ 630,000.00
10	RAISED INTERSECTION	1	LS	\$ 20,000.00	\$ 20,000.00
11	RETAINING WALL	121	LF	\$ 250.00	\$ 30,250.00
12	ARM-MOUNTED LED STREET LIGHT	18	EA	\$ 13,700.00	\$ 246,600.00
13	POLE-MOUNTED LED STREET LIGHT	41	EA	\$ 13,700.00	\$ 561,700.00
14	MISSION BAY STANDARD STREET LIGHT	8	EA	\$ 13,700.00	\$ 109,600.00
15	STREET TREES	103	EA	\$ 7,600.00	\$ 782,800.00
16	TREE GRATE - ROUND	7	EA	\$ 3,000.00	\$ 21,000.00
17	TREE GRATE - SQUARE	56	EA	\$ 3,000.00	\$ 168,000.00
18	ABOVE GRADE PLANTERS	9	EA	\$ 4,200.00	\$ 37,800.00
19	GRAVEL MULCH	2,838	SF	\$ 6.00	\$ 17,028.00
20	STRUCTURAL SOIL	4,366	CY	\$ 100.00	\$ 436,618.81
21	COLLAPSIBLE BOLLARD	10	EA	\$ 1,500.00	\$ 15,000.00
22	FIXED BOLLARD	10	EA	\$ 2,500.00	\$ 25,000.00
23	BENCH	16	EA	\$ 1,475.00	\$ 23,600.00
24	TRASH RECEPTACLE	4	EA	\$ 1,900.00	\$ 7,600.00
25	BIKE RACK	93	EA	\$ 1,000.00	\$ 93,000.00
26	TRENCH DRAIN	410	LF	\$ 200.00	\$ 82,000.00
27	FIRE LANE PAVEMENT MARKERS	96	EA	\$ 30.00	\$ 2,880.00
28	PARKING METER (CITY INSTALL, NO COST)	2	EA	\$	\$
29	SEAT WALL	1,029	LF	\$ 200.00	\$ 205,880.00
30	STEEL PLANT PROTECTION FENCE	727	LF	\$ 50.00	\$ 36,350.00
31	WUNDERCOVER PAVER LID FOR POLE LIGHT BOX	32	EA	\$ 4,500.00	\$ 144,000.00
32	WUNDERCOVER PAVER LID FOR DES VALVE BOX	2	EA	\$ 4,500.00	\$ 9,000.00
33	PEDESTRIAN BARRIER	1	EA	\$ 1,000.00	\$ 1,000.00
34	LANDSCAPING & IRRIGATION	1	LS	\$ 750,000.00	\$ 750,000.00
STREETSCAPE SUBTOTAL				\$	6,607,625.21



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
LOW PRESSURE WATER					
1	6" DIP FIELD LOK WATER LINE (3-FEET COVER)	0	LF	\$ 145.00	\$
2	6" DIP FIELD LOK WATER LINE (3-FEET COVER) MAKE READY	0	LF	\$ 145.00	\$
3	8" DIP FIELD LOK WATER LINE (3-FEET COVER)	478	LF	\$ 185.00	\$ 88,441.10
4	8" DIP FIELD LOK WATER LINE (3-FEET COVER) MAKE READY	0	LF	\$ 185.00	\$
5	12" DIP FIELD LOK WATER LINE (3-FEET COVER)	1,239	LF	\$ 210.00	\$ 260,194.20
6	12" DIP FIELD LOK WATER LINE (3-FEET COVER) MAKE READY	0	LF	\$ 210.00	\$
7	CATHODIC PROTECTION FOR ALL DIP LINES	0	LF	\$ 60.00	\$
8	1" DOMESTIC WATER SERVICE STUB (ASSUME 40-FEET)	0	EA	\$ 1,200.00	\$
9	2" DOMESTIC WATER SERVICE STUB (ASSUME 40-FEET)	1	EA	\$ 1,600.00	\$ 1,600.00
10	4" DIP FIELD LOK DOMESTIC WATER SERVICE STUB W/GATE VALVE (ASSUME 40-FEET)	1	EA	\$ 10,900.00	\$ 10,900.00
11	6" DIP FIELD LOK DOMESTIC WATER SERVICE STUB W/GATE VALVE (ASSUME 40-FEET)	4	EA	\$ 13,300.00	\$ 53,200.00
12	6" DIP CLASS 53 FIRE SERVICE STUB W/GATE VALVE (ASSUME 40-FEET)	0	EA	\$ 13,300.00	\$
13	8" DIP CLASS 53 FIRE SERVICE STUB W/GATE VALVE (ASSUME 40-FEET)	8	EA	\$ 16,050.00	\$ 128,400.00
14	4" GATE VALVE MAKE READY	0	EA	\$ 6,500.00	\$
15	6" GATE VALVE	0	EA	\$ 7,500.00	\$
16	6" GATE VALVE MAKE READY	0	EA	\$ 7,500.00	\$
17	8" GATE VALVE	0	EA	\$ 8,650.00	\$
18	8" GATE VALVE MAKE READY	0	EA	\$ 8,650.00	\$
19	12" GATE VALVE	14	EA	\$ 10,500.00	\$ 147,000.00
20	12" GATE VALVE MAKE READY	0	EA	\$ 10,500.00	\$
21	FIRE HYDRANT ASSEMBLY (INCLUDES LATERAL WITH VALVE AT CONNECTION TO MAIN)	8	EA	\$ 15,000.00	\$ 120,000.00
22	FIRE HYDRANT ASSEMBLY ACROSS THIRD ST (INCLUDES LATERAL WITH VALVE AT CONNECTION TO MAIN)	1	EA	\$ 45,000.00	\$ 45,000.00
23	AIR RELEASE VALVE	2	EA	\$ 5,000.00	\$ 10,000.00
24	BLOW OFF ASSEMBLY	0	EA	\$ 2,500.00	\$
25	CAP	2	EA	\$ 350.00	\$ 700.00
26	CAP MAKE READY	0	EA	\$ 350.00	\$
27	REDUCER MAKE READY	0	EA	\$ 1,130.00	\$
28	REDUCED PRESSURE BACKFLOW PREVENTER	1	EA	\$ 5,000.00	\$ 5,000.00
29	DOUBLE CHECK DETECTOR ASSEMBLY	1	EA	\$ 7,500.00	\$ 7,500.00
30	BYPASS	0	EA	\$ 2,200.00	\$
31	WATER METER	1	EA	\$ 4,800.00	\$ 4,800.00
32	12" FLEXIBLE EXPANSION JOINT	1	EA	\$ 30.00	\$ 30.00
33	8" X 8" X 4" TEE MAKE READY	0	EA	\$ 1,200.00	\$
34	8" X 8" X 6" TEE	1	EA	\$ 1,200.00	\$ 1,200.00
35	8" X 8" X 8" TEE	1	EA	\$ 1,200.00	\$ 1,200.00
36	8" X 8" X 8" TEE MAKE READY	0	EA	\$ 1,200.00	\$
37	12" X 12" X 4" TEE	1	EA	\$ 2,000.00	\$ 2,000.00
38	12" X 12" X 6" TEE	11	EA	\$ 2,000.00	\$ 22,000.00
39	12" X 12" X 8" TEE	8	EA	\$ 2,000.00	\$ 16,000.00
40	12" X 12" X 12" TEE	3	EA	\$ 2,000.00	\$ 6,000.00
41	12" X 12" X 12" TEE MAKE READY	0	EA	\$ 2,000.00	\$
42	CONNECTION TO PREVIOUS PHASE	1	EA	\$ 5,800.00	\$ 5,800.00
43	CONNECTION TO EXISTING WATER SYSTEM (THIRD STREET)	1	EA	\$ 30,000.00	\$ 30,000.00
44	CONNECTION TO EXISTING WATER SYSTEM (T88 RELOCATION) MAKE READY	0	EA	\$ 20,000.00	\$
45	1/2" METAL PLATE	137	SE	\$ 35.00	\$ 4,785.55
45	FIRE DEPARTMENT CONNECTION	1	EA	\$ 10,000.00	\$ 10,000.00
LOW PRESSURE WATER SUBTOTAL					\$ 981,750.85



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
NON-POTABLE WATER					
1	8" DIP CLASS 53 NON-POTABLE WATER LINE (3-FEET DEEP)	1,218	LF	\$ 185.00	\$ 225,574.20
2	8" GATE VALVE	2	EA	\$ 8,650.00	\$ 17,300.00
3	2" NON-POTABLE WATER LATERAL (ASSUME 40 FEET)	0	EA	\$ 1,600.00	\$
4	4" NON-POTABLE WATER LATERAL WITH GATE VALVE (ASSUME 40 FEET)	1	EA	\$ 10,900.00	\$ 10,900.00
5	6" NON-POTABLE WATER LATERAL WITH GATE VALVE (ASSUME 40 FEET)	3	EA	\$ 13,300.00	\$ 39,900.00
6	8" NON-POTABLE WATER LATERAL WITH GATE VALVE (ASSUME 40 FEET)	1	EA	\$ 16,050.00	\$ 16,050.00
7	AIR RELEASE VALVE	3	EA	\$ 5,000.00	\$ 15,000.00
8	BLOW OFF ASSEMBLY	2	EA	\$ 2,500.00	\$ 5,000.00
9	CAP	2	EA	\$ 350.00	\$ 700.00
10	4" IRRIGATION LATERAL WITH BOXES, WATER METER AND BFP	1	EA	\$ 6,800.00	\$ 6,800.00
11	CONNECTION TO EXISTING RECYCLED WATER SYSTEM	0	EA	\$ 10,000.00	\$
12	CONNECTION TO PREVIOUS PHASE	0	EA	\$ 5,800.00	\$
NON-POTABLE WATER SUBTOTAL					\$ 337,224.20

STORM DRAIN					
1	10" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY)	143	LF	\$ 250.00	\$ 35,775.00
1	12" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY) MAKE READY	0	LF	\$ 310.00	\$
2	12" HDPE SDR 17 STORM DRAIN PIPE, 10 TO 15-FEET COVER (GRAVITY)	259	LF	\$ 335.00	\$ 89,947.50
3	14" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY)	358	LF	\$ 360.00	\$ 129,024.00
4	18" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY)	297	LF	\$ 450.00	\$ 133,573.50
5	24" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY)	283	LF	\$ 500.00	\$ 141,390.00
6	30" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY) MAKE READY	0	LF	\$ 250.00	\$
7	36" HDPE SDR 17 STORM DRAIN PIPE, 5 TO 10-FEET COVER (GRAVITY)	244	LF	\$ 225.00	\$ 57,025.75
8	8" HDPE SDR 17 STORM DRAIN LATERAL AND CLEANOUT (ASSUME 40-FEET)	1	EA	\$ 3,900.00	\$ 3,900.00
9	10" HDPE SDR 17 STORM DRAIN LATERAL AND CLEANOUT (ASSUME 40-FEET)	2	EA	\$ 5,700.00	\$ 11,400.00
10	12" HDPE SDR 17 STORM DRAIN LATERAL AND CLEANOUT (ASSUME 40-FEET)	1	EA	\$ 6,900.00	\$ 6,900.00
11	14" HDPE SDR 17 STORM DRAIN LATERAL AND CLEANOUT (ASSUME 40-FEET)	5	EA	\$ 8,900.00	\$ 44,500.00
12	STORM DRAIN MANHOLE (5-FEET TO 10-FEET COVER, 12 TO 24-INCH MAIN)	14	EA	\$ 8,800.00	\$ 123,200.00
13	STORM DRAIN MANHOLE (10-FEET TO 17-FEET COVER, 12 TO 24-INCH MAIN)	1	EA	\$ 15,000.00	\$ 15,000.00
14	STORM DRAIN MANHOLE (5-FEET TO 10-FEET COVER, 27 TO 48-INCH MAIN)	2	EA	\$ 7,000.00	\$ 14,000.00
15	STORM DRAIN MANHOLE (10-FEET TO 20-FEET COVER, 27 TO 48-INCH MAIN) DIVERSION WELL	1	EA	\$ 15,000.00	\$ 15,000.00
16	STORM DRAIN MANHOLE COVER	15	EA	\$ 1,500.00	\$ 22,500.00
17	STORM DRAIN MANHOLE COVER (CUSTOM)	3	EA	\$ 4,500.00	\$ 13,500.00
18	CONNECTION TO EXISTING STORM DRAIN SYSTEM (THIRD STREET)	8	EA	\$ 17,500.00	\$ 140,000.00
19	CONNECTION TO EXISTING STORM DRAIN SYSTEM MAKE READY	0	EA	\$ 10,000.00	\$
20	CONNECTION TO PREVIOUS PHASE	2	EA	\$ 5,000.00	\$ 10,000.00
21	CAP	2	EA	\$ 350.00	\$ 700.00
22	CATCH BASIN, CALTRANS	23	EA	\$ 3,200.00	\$ 73,600.00
23	CATCH BASIN, CALTRANS MAKE READY	0	EA	\$ 3,200.00	\$
24	SAND TRAP COVER	1	EA	\$ 1,500.00	\$ 1,500.00
25	TRENCH DEWATERING (ASSUME ALL GRAVITY STORM DRAIN LINES)	1,753	LF	\$ 125.00	\$ 219,167.50
26	CLEANOUT	0	EA	\$ 700.00	\$
27	BIO RETENTION PLANTER	692	SF	\$ 100.00	\$ 69,160.00
STORM DRAIN SUBTOTAL					\$ 1,380,763.25



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
SANITARY SEWER					
1	8" HDPE SDR 17 SANITARY SEWER LINE, 5 TO 10-FEET COVER (FORCE MAIN)	32	LF	\$ 230.00	\$ 7,392.00
2	8" HDPE SDR 17 SANITARY SEWER LINE, 5 TO 10-FEET COVER (GRAVITY)	170	LF	\$ 160.00	\$ 27,200.00
3	10" HDPE SDR 17 SANITARY SEWER LINE, 5 TO 10-FEET COVER (GRAVITY)	251	LF	\$ 250.00	\$ 62,775.00
4	10" HDPE SDR 17 SANITARY SEWER LINE, 10 TO 15- FEET COVER (GRAVITY)	602	LF	\$ 350.00	\$ 210,721.00
5	12" HDPE SDR 17 SANITARY SEWER LINE, 5 TO 10- FEET COVER (GRAVITY)	308	LF	\$ 316.00	\$ 95,455.20
6	SANITARY SEWER MANHOLE (5- FEET TO 10- FEET COVER, 12 TO 24- INCH MAIN)	4	EA	\$ 8,800.00	\$ 35,200.00
7	SANITARY SEWER MANHOLE (10- FEET TO 17- FEET COVER, 12 TO 24- INCH MAIN)	4	EA	\$ 15,000.00	\$ 60,000.00
8	6" HDPE SDR 17 SANITARY SEWER LATERAL AND VENT (ASSUME 40- FEET)	1	EA	\$ 2,700.00	\$ 2,700.00
9	8" HDPE SDR 17 SANITARY SEWER LATERAL AND VENT (ASSUME 40- FEET)	1	EA	\$ 3,900.00	\$ 3,900.00
10	10" HDPE SDR 17 SANITARY SEWER LATERAL AND VENT (ASSUME 40- FEET)	2	EA	\$ 5,700.00	\$ 11,400.00
11	12" HDPE SDR 17 SANITARY SEWER LATERAL AND VENT (ASSUME 40- FEET)	1	EA	\$ 6,900.00	\$ 6,900.00
12	CONNECTION TO EXISTING SANITARY SEWER SYSTEM	1	EA	\$ 10,000.00	\$ 10,000.00
13	CONNECTION TO PREVIOUS PHASE	0	EA	\$ 5,000.00	\$
14	CAP	0	EA	\$ 350.00	\$
15	CLEANOUT	0	EA	\$ 700.00	\$
16	FRENCH DEWATERING (ASSUME ALL GRAVITY SANITARY SEWER LINES)	1,563	LF	\$ 125.00	\$ 195,402.50
SANITARY SEWER SUBTOTAL					\$ 729,045.90

AUXILIARY WATER SUPPLY SYSTEM (AWSS)					
1	20" KUBOTA FIRE WATER LINE (3- FEET DEEP)	940	LF	\$ 1,000.00	\$ 940,000.00
2	FIRE HYDRANT ASSEMBLY (INCLUDES LATERAL CONNECTION TO MAIN)	2	EA	\$ 86,000.00	\$ 172,000.00
3	20" GATE VALVE	2	EA	\$ 45,000.00	\$ 90,000.00
4	THRUST BLOCK	2	EA	\$ 3,000.00	\$ 6,000.00
5	20"X12" REDUCER	1	EA	\$ 6,200.00	\$ 6,200.00
6	22.5 DEG BEND	8	EA	\$ 6,400.00	\$ 51,200.00
7	45 DEG BEND	3	EA	\$ 6,400.00	\$ 19,200.00
8	12" X 12" X 12" TEE	1	EA	\$ 12,000.00	\$ 12,000.00
9	CAP	1	EA	\$ 2,000.00	\$ 2,000.00
10	2" BYPASS LINE	0	LF	\$ 30.00	\$
11	CONNECTION TO PREVIOUS PHASE	0	EA	\$ 5,800.00	\$
11	CONNECTION TO EXISTING AWSS SYSTEM (THIRD STREET)	1	EA	\$ 50,000.00	\$ 50,000.00
AUXILIARY WATER SUPPLY SYSTEM (AWSS) SUBTOTAL					\$ 1,348,600.00



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE 1

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
DISTRICT ENERGY					
1	8" HDPE SDR 11 HEATED HOT WATER LINE WITH 3" INSULATION	500	LF	\$ 320.00	\$ 160,000.00
2	10" HDPE SDR 11 HEATED HOT WATER LINE WITH 3" INSULATION	885	LF	\$ 500.00	\$ 442,500.00
3	12" HDPE SDR 11 HEATED HOT WATER LINE WITH 3" INSULATION	1,130	LF	\$ 620.00	\$ 700,600.00
4	16" HDPE SDR 11 HEATED HOT WATER LINE WITH 3" INSULATION	265	LF	\$ 720.00	\$ 190,800.00
5	10" HDPE SDR 17 CHILLED WATER LINE	500	LF	\$ 250.00	\$ 125,000.00
6	14" HDPE SDR 17 CHILLED WATER LINE	870	LF	\$ 360.00	\$ 313,200.00
7	16" HDPE SDR 17 CHILLED WATER LINE	1,130	LF	\$ 410.00	\$ 463,300.00
8	20" HDPE SDR 17 CHILLED WATER LINE	230	LF	\$ 460.00	\$ 105,800.00
9	4" HEATED HOT WATER LATERAL WITH 3" INSULATION (ASSUME 40- FEET)	4	EA	\$ 8,000.00	\$ 32,000.00
10	6" HEATED HOT WATER LATERAL WITH 3" INSULATION (ASSUME 40- FEET)	6	EA	\$ 12,000.00	\$ 72,000.00
11	6" CHILLED WATER LATERAL (ASSUME 40 FEET)	4	EA	\$ 6,000.00	\$ 24,000.00
12	8" CHILLED WATER LATERAL (ASSUME 40- FEET)	6	EA	\$ 6,400.00	\$ 38,400.00
13	8" GATE VALVE	4	EA	\$ 8,650.00	\$ 34,600.00
14	10" GATE VALVE	1	EA	\$ 9,500.00	\$ 9,500.00
15	GATE VALVE WUNDERCOVER	4	EA	\$ 1,500.00	\$ 6,000.00
16	CAP	8	EA	\$ 350.00	\$ 2,800.00
DISTRICT ENERGY SUBTOTAL					\$ 2,749,000.00

BAY CONDENSER WATER					
1	16" HDPE SDR 17 BAY CONDENSER WATER LINE	1,085	LF	\$ 205.00	\$ 222,425.00
2	CAP	2	EA	\$ 350.00	\$ 700.00
BAY CONDENSER WATER SUBTOTAL					\$ 223,125.00

TRAFFIC SIGNAL IMPROVEMENTS					
1	MINOR TRAFFIC SIGNAL MODIFICATIONS AT CHANNEL STREET	1	LS	\$ 250,000.00	\$ 250,000.00
2	NEW TRAFFIC SIGNAL AT EXPOSITION STREET	1	LS	\$ 650,000.00	\$ 650,000.00
3	MINOR TRAFFIC SIGNAL MODIFICATIONS AT THE THIRD STREET BRIDGE	1	LS	\$ 100,000.00	\$ 100,000.00
TRAFFIC SIGNAL IMPROVEMENTS					\$ 1,000,000.00



**MISSION ROCK DEVELOPMENT
PRELIMINARY OPINION OF HORIZONTAL CONSTRUCTION COSTS**

PHASE I

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT
JOINT TRENCH					
1	6" GAS TRENCH INCLUDES BACKFILL, MAIN AND TRENCHING	2,103	LF	\$ 85.00	\$ 178,759.25
2	JOINT TRENCH (ELEC/COMM)	1,365	LF	\$ 350.00	\$ 477,918.00
3	STREET LIGHT TRENCH	2,603	LF	\$ 55.00	\$ 143,150.15
4	TRANSFORMER (ASSUME 25 KVA)	0	EA	\$ 25,000.00	\$
5	MAIN SWITCH	0	EA	\$ 15,000.00	\$
6	#6 VAULT	2	EA	\$ 12,000.00	\$ 24,000.00
7	#8 VAULT	9	EA	\$ 16,000.00	\$ 144,000.00
8	D3 BOX	6	EA	\$ 4,000.00	\$ 24,000.00
9	C4 BOX	5	EA	\$ 5,000.00	\$ 25,000.00
10	A1&T (15) BOX	5	EA	\$ 6,500.00	\$ 32,500.00
11	#2 BOX	6	EA	\$ 3,000.00	\$ 18,000.00
12	STREET LIGHT BOX	5	EA	\$ 2,000.00	\$ 10,000.00
13	JOINT TRENCH SERVICE STUB	11	EA	\$ 2,500.00	\$ 27,500.00
14	TEMPORARY POWER	1	LS	\$ 420,000.00	\$ 420,000.00
JOINT TRENCH SUBTOTAL					\$ 1,524,827.40
SUBTOTAL					\$ 19,270,644.96

EXHIBIT D

Documentation Required for Public Improvement Agreement

1. Street Improvement Permit [*City Review Pending*]
2. Irrevocable Offer of Dedication of Improvements
3. Payment and Performance Bonds and Monument Bonds
4. Maintenance Matrix
5. Master Homeowner Association Covenants, Conditions and Restrictions (applies only if Final Map authorizes residential condominiums)
6. Bonding to Complete the Improvements

EXHIBIT E

Subdivider Request Letter for Items Deferred and Conditions for Deferred Compliance

EXHIBIT F-1

List of Documents Required by City in Order to issue a Notice of Completion

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

EXHIBIT F-2

List of Documents Required by Port in Connection with or in Order to Issue a Notice of Completion for Port Improvements

1. Copies of any Determinations of Completion for Phase Improvement(s) previously issued by Public Works, if applicable.
2. Confirmation of completion of all work described in the associated improvement City or Port permit including any instructional bulletins (IBs) and notice of correction report (NCRs)
3. Confirmation of completion of all corrective work described in “field observation reports.”
4. Complete as-built record drawings as required per Section 12.4 of the DDA.
5. Confirmation that infrastructure is built within the limits of any easements (as applicable) or applicable memoranda of understanding and no additional rights are needed.
6. Sign-off from the Engineer of Record.
7. Sign-off from the Landscape Architect of Record.
8. Sign-off from third-party utility companies.
9. Evidence of Port permit completion, including punch list items.
10. A binder including the following:
 - a. Evidence of Public Works Americans with Disabilities Act sign-off;
 - b. Documentation that Adequate Security (as defined in the DDA) has been provided to the Port for at least 10% of the estimated cost of completion of the improvements for a one-year period;
 - c. Documentation that any warranties for Port Improvements have been (or will be upon acceptance) assigned to the Port;
 - d. Evidence of recordation of a Notice of Completion by Subdivider;
 - e. Evidence that that the Notice of Completion has been given to all direct contractors and claimants per California Civil Code Section 8190;
 - f. Preliminary title report;

- g. Offer of Dedication for Port Improvements; and
- h. Evidence that appropriate rights have been granted to the Port for safe access for pedestrians and vehicles to Port facilities via Subdivider's improvements in unaccepted streets.

EXHIBIT G

Documents to be Submitted Concurrent with Request for Acceptance

1. Developer Request for Acceptance Letter
2. Lien Notification to General Contractor and Subcontractors
3. Utility Bill of Sale
4. Third-Party Reimbursement Checks-Copies
5. Assignment of Warranties and Guaranties
6. License Agreements (as applicable)
7. Mechanic's Lien Guarantee
8. Modified Offers of Improvements (as applicable)
9. Modified Deeds (as applicable)
10. Master Encroachment Permit and associated agreement for Private Utility Improvements in the right-of-way

EXHIBIT H-1

Performance Bond

Bond No. 6134995116

Premium: \$647,739.00

PERFORMANCE BOND

(Form: Faithful Performance Bond - Mission Rock Required Infrastructure)

Whereas, Mission Rock Horizontal Sub (Phase 1) LLC (hereinafter designated as "**Principal**"), and the City and County of San Francisco, State of California ("**City**"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Public Improvement Agreement - Mission Rock Phase 1 ("**Agreement**"), dated _____ 202_, and identified as Mission Rock Required Infrastructure, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of its obligations.

Now, therefore, we, Principal and United States Fire Insurance Company, as Surety ("**Surety**"), are held and firmly bound unto the City in the penal sum of Twenty Eight Million Seven Hundred Eighty Eight Thousand four Hundred Twenty One and 00/100 (\$28,788,421.00) lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation shall become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to, abide by, well and truly keep, and perform the covenants, conditions, and provisions in the Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to his or their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, incurred by the City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, the work to be performed thereunder, or the specifications accompanying the Agreement shall in any way affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the Agreement, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety on May 22, 2020.

“PRINCIPAL”

Mission Rock Horizontal Sub (Phase 1), L.L.C. a Delaware limited liability company

By: Seawall Lot 337 Associates, L.L.C., its sole member

By: Mission Rock Partners LLC, its sole member

By: TSCE 2007 Mission Rock, L.L.C., its administrative member

By: 

Name: _____
Title: _____
Authorized Signatory
Carl D. Shannon

“SURETY”

United States Fire Insurance Company

By: 
Michelle Anne McMahon

Its: Attorney-in-Fact

Address:

305 Madison Avenue, Morristown, NJ 07962

Telephone: 973-490-6600

Facsimile: N/A

Bond No. 6134995125

Premium: \$18,873.00

PERFORMANCE BOND

(Form: Faithful Performance Bond - Mission Rock Required Infrastructure)

Whereas, Mission Rock Horizontal Sub (Phase 1) LLC (hereinafter designated as "**Principal**"), and the City and County of San Francisco, State of California ("**City**"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Public Improvement Agreement - Mission Rock Phase 1 ("**Agreement**"), dated _____ 202_, and identified as Mission Rock Required Infrastructure, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of its obligations.

Now, therefore, we, Principal and United States Fire Insurance Company, as Surety ("**Surety**"), are held and firmly bound unto the City in the penal sum of Eight Hundred Thirty Eight Thousand Eight Hundred and 00/100 (\$838,800.00) lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation shall become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to, abide by, well and truly keep, and perform the covenants, conditions, and provisions in the Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to his or their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, incurred by the City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, the work to be performed thereunder, or the specifications accompanying the Agreement shall in any way affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the Agreement, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety on May 22, 2020.

"PRINCIPAL"

Mission Rock Horizontal Sub (Phase 1), L.L.C. a Delaware limited liability company

By: Seawall Lot 337 Associates, L.L.C., its sole member

By: Mission Rock Partners LLC, its sole member

By: TSCE 2007 Mission Rock, L.L.C., its administrative member

By: 

Name: **Authorized Signatory**

Title: **Carl D. Shannon**

"SURETY"

United States Fire Insurance Company

By: 
Michelle Anne McMahon

Its: Attorney-in-Fact

Address:

305 Madison Avenue, Morristown, NJ 07962

Telephone: 973-490-6600

Facsimile: N/A

EXHIBIT H-2

Labor and Materials Bond

Bond No. 6134995116

Premium: Included in Performance Bond

LABOR AND MATERIALS BOND

(Form: Labor & Materials Bond – Mission Rock Required Infrastructure)

Whereas, Mission Rock Horizontal Sub (Phase 1) LLC (hereinafter designated as "**Principal**"), and the City and County of San Francisco, State of California ("**City**"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Public Improvement Agreement - Mission Rock Phase 1 ("**Agreement**"), dated _____ 2020, and identified as Mission Rock Required Infrastructure, is hereby referred to and made a part hereof; and

Whereas, under the terms of the Agreement, Principal is required before entering upon the performance of the work to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with section 9000) of Part 6 of Division 4 of the Civil Code of the State of California;

Now, therefore, we, the Principal and the undersigned as corporate Surety ("**Surety**"), are held and firmly bound unto the City and all contractors, subcontractors, laborers, material men, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Fourteen Million Three Hundred Ninety Four Thousand Two Hundred Ten and 50/100 (\$14,394,210.50), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount set forth. If suit is brought upon this bond, Surety will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City, in successfully enforcing the obligation, to be awarded and fixed by the Court, to be taxed as costs, and to be included in the judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or the specifications accompanying the Agreement shall in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety on May 22, 2020.

“PRINCIPAL”

Mission Rock Horizontal Sub (Phase 1), L.L.C. a Delaware limited liability company

By: Seawall Lot 337 Associates, L.L.C., its sole member

By: Mission Rock Partners LLC, its sole member

By: TSCE 2007 Mission Rock, L.L.C., its administrative member

By:

Name:

Title:



Authorized Signatory
Carl D. Shannon

“SURETY”

United States Fire Insurance Company

By: 
Michelle Anne McMahon

Its: Attorney-in-Fact

Address:

305 Madison Avenue, Morristown, NJ 07962

Telephone: 973-490-6600

Facsimile: N/A

NOTARY ACKNOWLEDGMENT OF SURETY:

State of Connecticut

County of Hartford ss.

On this the 22nd day of May, 2020, before me, Brendan Fletcher, the undersigned officer, personally appeared Michelle Anne McMahon, known to me (or satisfactorily proven) to be the person whose name is subscribed as Attorney-In-Fact for United States Fire Insurance Company, and acknowledged that s/he executed the same as the act of his/her principal for the purposes therein contained.

In witness whereof I hereunto set my hand.



Signature of Notary Public

Date Commission Expires: February 28, 2025

Brendan Fletcher

Printed Name of Notary

BRENDAN FLETCHER

NOTARY PUBLIC - CT 180835

My Commission Expires Feb. 28, 2025

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

79560

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Aimee R. Perondine, Aiza Anderson, Bethany Stevenson, Danielle D. Johnson, Donna M. Planeta, Jenny Rose Belen Phothirath,, Joshua Sanford Mercedes Phothirath Samuel E. Begun, Melissa J. Stanton, Lorina Monique Garcia, Nicholas Turecarno, Michelle Anne McMahon,

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Fifty Million Dollars (\$50,000,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2021.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

- (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;
- (b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. - The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10th day of March, 2016.



UNITED STATES FIRE INSURANCE COMPANY

A.R.R.

Anthony R. Slimowicz, Executive Vice President

State of New Jersey }
County of Morris }

On this 10th day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

SONIA SCALA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 3/25/2024 No. 2163686

Sonia Scala

Sonia Scala

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 11th day of May, 2020



UNITED STATES FIRE INSURANCE COMPANY

Peter M. Quinn

Peter M. Quinn, Senior Vice President

Bond No. 6134995125

Premium: Included in Performance Bond

LABOR AND MATERIALS BOND

(Form: Labor & Materials Bond – Mission Rock Required Infrastructure)

Whereas, Mission Rock Horizontal Sub (Phase 1) LLC (hereinafter designated as "**Principal**"), and the City and County of San Francisco, State of California ("**City**"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Public Improvement Agreement - Mission Rock Phase 1 ("**Agreement**"), dated _____ 2020, and identified as Mission Rock Required Infrastructure, is hereby referred to and made a part hereof; and

Whereas, under the terms of the Agreement, Principal is required before entering upon the performance of the work to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with section 9000) of Part 6 of Division 4 of the Civil Code of the State of California;

Now, therefore, we, the Principal and the undersigned as corporate Surety ("**Surety**"), are held and firmly bound unto the City and all contractors, subcontractors, laborers, material men, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Four Hundred Nineteen Four Hundred and 00/100 (419,400.00), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount set forth. If suit is brought upon this bond, Surety will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City, in successfully enforcing the obligation, to be awarded and fixed by the Court, to be taxed as costs, and to be included in the judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or the specifications accompanying the Agreement shall in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety on May 22, 2020.


“PRINCIPAL”

Mission Rock Horizontal Sub (Phase 1), L.L.C. a Delaware limited liability company

By: Seawall Lot 337 Associates, L.L.C., its sole member


By: Mission Rock Partners LLC, its sole member

By: TSCE 2007 Mission Rock, L.L.C., its administrative member

By: 
Name: Authorized Signatory
Title: Carl D. Shannon

“SURETY”

United States Fire Insurance Company

By: 
Michelle Anne McMahon

Its: Attorney-in-Fact

Address:
305 Madison Avenue, New York, NY 07962

Telephone: 973-490-6600

Facsimile: N/A


NOTARY ACKNOWLEDGMENT OF SURETY:

State of Connecticut

County of Hartford ss.

On this the 22nd day of May, 2020, before me, Brendan Fletcher, the undersigned officer, personally appeared Michelle Anne McMahon, known to me (or satisfactorily proven) to be the person whose name is subscribed as Attorney-In-Fact for United States Fire Insurance Company, and acknowledged that s/he executed the same as the act of his/her principal for the purposes therein contained.

In witness whereof I hereunto set my hand.



Signature of Notary Public

Date Commission Expires: February 28, 2025

Brendan Fletcher

Printed Name of Notary

BRENDAN FLETCHER
NOTARY PUBLIC - CT 180835
My Commission Expires Feb. 28, 2025

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

79560

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Aimee R. Perondine, Aiza Anderson, Bethany Stevenson, Danielle D. Johnson, Donna M. Planeta, Jenny Rose Belen Phothirath,, Joshua Sanford Mercedes Phothirath Samuel E. Begun, Melissa J. Stanton, Lorina Monique Garcia, Nicholas Turecamo, Michelle Anne McMahon,

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Fifty Million Dollars (\$50,000,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2021.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10th day of March, 2016.

UNITED STATES FIRE INSURANCE COMPANY

A.R.R.

Anthony R. Slimowicz, Executive Vice President

State of New Jersey }
County of Morris }

On this 10th day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

**SONIA SCALA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 3/25/2024 No. 2163686**

Sonia Scala

Sonia Scala

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 11th day of May, 2020

UNITED STATES FIRE INSURANCE COMPANY

Peter M. Quinn

Peter M. Quinn, Senior Vice President



Opinion of Probable Cost

Mission Rock Blackwater Plant

Influent Pump Station

12/20/2019

SUMMARY

Major Equipment	\$169,300
Misc. Mechanical	\$8,500
Electrical, I&C	\$25,400
Major Structural	\$75,800
Minor Structural + Coatings	\$21,800
Major Sitework	\$247,300
Major Piping	\$6,800
Fire Protection, Ventilation & Odor Control	\$64,600
SUBTOTAL	\$619,000
Bonds, Insurance, Overhead, GCs	\$61,900
Contingency on Equipment & Piping	\$18,000
CONSTRUCTION COST	\$698,900
Engineering	\$70,000
Permits, Legal and Other Soft Costs	\$69,900
TOTAL COST	\$838,800



EXHIBIT H-3

Monument Bond

Bond No. 6134995134

Premium: \$153.00

PERFORMANCE BOND

(Form: Faithful Performance Bond - Mission Rock Required Infrastructure)

Whereas, Mission Rock Horizontal Sub (Phase 1) LLC (hereinafter designated as "**Principal**"), and the City and County of San Francisco, State of California ("**City**"), have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Public Improvement Agreement - Mission Rock Phase 1 ("**Agreement**"), dated _____ 202_, and identified as Mission Rock Required Infrastructure, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of its obligations.

Now, therefore, we, Principal and United States Fire Insurance Company, as Surety ("**Surety**"), are held and firmly bound unto the City in the penal sum of Six Thousand Eight Hundred and 00/100 (\$6,800.00) lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation shall become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to, abide by, well and truly keep, and perform the covenants, conditions, and provisions in the Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to his or their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, incurred by the City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, the work to be performed thereunder, or the specifications accompanying the Agreement shall in any way affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the Agreement, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety on May 22, 2020.


“PRINCIPAL”

Mission Rock Horizontal Sub (Phase 1), L.L.C. a Delaware limited liability company

By: Seawall Lot 337 Associates, L.L.C., its sole member

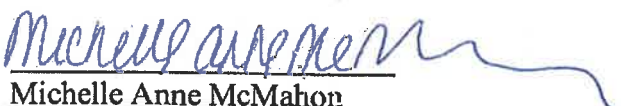
By: Mission Rock Partners LLC, its sole member

By: TSCE 2007 Mission Rock, L.L.C., its administrative member

By: 
Name: Authorized Signatory
Title: Carl D. Shannon

“SURETY”

United States Fire Insurance Company

By: 
Michelle Anne McMahon

Its: Attorney-in-Fact

Address:

305 Madison Avenue, Morristown, NJ 07962

Telephone: 973-490-6600

Facsimile: N/A


NOTARY ACKNOWLEDGMENT OF SURETY:

State of Connecticut

County of Hartford ss.

On this the 22nd day of May, 2020, before me, Brendan Fletcher, the undersigned officer, personally appeared Michelle Anne McMahon, known to me (or satisfactorily proven) to be the person whose name is subscribed as Attorney-In-Fact for United States Fire Insurance Company, and acknowledged that s/he executed the same as the act of his/her principal for the purposes therein contained.

In witness whereof I hereunto set my hand.



Signature of Notary Public

Date Commission Expires: February 28, 2025

Brendan Fletcher

Printed Name of Notary

BRENDAN FLETCHER
NOTARY PUBLIC - CT 180835
My Commission Expires Feb, 28, 2025

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

79560

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Aimee R. Perondine, Aiza Anderson, Bethany Stevenson, Danielle D. Johnson, Donna M. Planeta, Jenny Rose Belen Phothirath,, Joshua Sanford
Mercedes Phothirath Samuel E. Begun, Melissa J. Stanton, Lorina Monique Garcia, Nicholas Turecamo, Michelle Anne McMahon,

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties not exceeding: **Fifty Million Dollars (\$50,000,000).**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney revokes all previous Powers of Attorney issued on behalf of the Attorneys-In-Fact named above and expires on January 31, 2021.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

(a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;

(b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 10th day of March, 2016.



UNITED STATES FIRE INSURANCE COMPANY

A.R.R.

Anthony R. Slimowicz, Executive Vice President

State of New Jersey }
County of Morris }

On this 10th day of March 2016, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

**SONIA SCALA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 3/25/2024 No. 2163686**

Sonia Scala

(Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 22nd day of May 2020



UNITED STATES FIRE INSURANCE COMPANY

Peter M. Quinn

Peter M. Quinn, Senior Vice President

EXHIBIT I

Guaranty for Extended Warranty

GUARANTY

This GUARANTY (“**Guaranty**”) is given as of _____, 2020, by _____, a Delaware limited liability company (“**Guarantor**”), to the City and County of San Francisco, a municipal corporation and charter city and county of the State of California (“**City**”), acting by and through its Department of Public Works (“**Public Works**”), and the City acting by and through the San Francisco Port Commission (“**Port**”).

RECITALS

WHEREAS, Mission Rock Horizontal Sub (Phase 1) LLC, a Delaware limited liability company (“**Subdivider**”) and City have entered into that certain Public Improvement Agreement (Mission Rock - Phase 1), dated _____, 2020 (the “**Agreement**”), wherein the Subdivider is required to perform certain obligations for the benefit of City; and

WHEREAS, certain obligations of Subdivider under the Agreement as more particularly described on Exhibit A attached hereto and made a part hereof (collectively, the “**Guaranteed Obligations**”) are being guaranteed by Guarantor as set forth in this Guaranty; and

WHEREAS, Guarantor will directly or indirectly benefit from the Subdivider’s interest in the Agreement and deems it to be in Guarantor’s best interest to provide this Guaranty to City; and

WHEREAS, this Guaranty constitutes the corporate guaranty required to be provided pursuant to Section 8(c)(iii) of the Agreement; and

WHEREAS, Guarantor is willing to guarantee the Guaranteed Obligations under the terms set forth below.

NOW THEREFORE, in consideration of City's entry into the Agreement (which Guarantor acknowledges constitutes adequate consideration for its obligations hereunder), Guarantor, intending to be legally bound, agrees as follows:

1. Obligations of Guarantor. Guarantor unconditionally and irrevocably guarantees to City the due and punctual payment (and not merely the collectability) and performance, as applicable, of the Guaranteed Obligations as and when the same shall become due and/or payable, on the terms provided in this Guaranty. In addition, Guarantor shall pay, and upon City request shall reimburse City promptly for, all reasonable out-of-pocket costs and expenses actually and reasonably incurred by City to enforce City's rights, powers or remedies under this Guaranty (including, without limitation, reasonable collection charges and Attorneys' Fees and Costs (as defined below)) (together with any late payment interest on amounts due as set forth below). With respect to Guaranteed Obligations any amount due and payable by Guarantor under this Guaranty but not paid within forty-five (45) days after receipt of City's written demand therefor shall be accompanied by interest on such amounts at the higher of ten percent (10%) per annum or the maximum amount permitted by law, calculated from the date of Guarantor's receipt of City's written demand therefor through and including the date of payment of such amounts (calculated on the basis of a 365-day year and for the actual number of days elapsed).

2. Duration. This Guaranty shall continue in full force and effect until all Guaranteed Obligations are fully satisfied and the Extended Warranty Period (as that term is defined in the Agreement) has concluded, except that if City has delivered a Notice of Warranty Work with respect to any Failure identified by City during the Extended Warranty Period, this Guaranty shall continue in full force and effect until such Failure has been corrected. City shall not be bound or obligated to exhaust its recourse against the Subdivider or other persons or, except as specifically provided in the Agreement or this Guaranty, to take any other action before being entitled to demand performance by Guarantor hereunder. This Guaranty shall continue to be effective even in the event of the insolvency, bankruptcy or reorganization of Subdivider. This Guaranty will also survive and be binding upon Guarantor following any merger, reorganization, consolidation or other change in Guarantor's structure, personnel, business or affairs.

3. Remedies of City. The rights and remedies of City under this Guaranty are cumulative and concurrent and shall not be exclusive of any other rights or remedies that City may have against Subdivider, Guarantor or any other person. No set-off, counterclaim, reduction or diminution of an obligation or any defense of any kind or nature that Guarantor has or may have against the Subdivider or City shall affect, modify or impair the obligations of Guarantor under this Guaranty.

4. Waivers. Guarantor hereby waives: (a) notice of acceptance of this Guaranty; (b) demand of payment, notice of nonperformance, notice of dishonor, presentation, protest, and indulgences and (except as specifically provided in this Guaranty) notices of any kind whatsoever; (c) any right to require City to proceed against the Subdivider or any other person or entity liable to City except to the extent expressly set forth in the Agreement; (e) any right to require City to pursue or enforce any remedy that City now has or may later have against the Subdivider or any other person or entity; (f) any right to participate in any security now or later held by City; and (h) any defense that may arise by the reason of: (1) the incapacity, lack of authority, death, disability or other defense of the Subdivider or any other person or entity (other than satisfaction of the applicable Guaranteed Obligations or the applicable Guaranteed Obligations are not then due); (2) the revocation or repudiation of this Guaranty by Guarantor;

(3) failure of City to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of the Subdivider or any others; (4) any election by City in any proceeding instituted under the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101, *et seq.*); (5) any borrowing or granting of a security interest under section 364 of the United States Bankruptcy Code; (6) City's election of any remedy against Guarantor, the Subdivider or any other party to the extent permitted hereunder or under the Agreement, as applicable; (7) City's taking, modification, or releasing of any collateral or guarantees, or any failure to perfect any security interest in, or the taking of or failure to perfect any other action with respect to any collateral securing performance of obligations under the Agreement, as applicable; (8) any amendment or modification of the Agreement or related documents, whether or not known or consented to by Guarantor (provided that the Guaranteed Obligations shall not be expanded without the consent of Guarantor); or (9) any offset by Guarantor against any obligation now or later owed to Guarantor by the Subdivider or any other person, it being the intention of this Guaranty that Guarantor remain liable to the full extent set forth in this Guaranty until the full performance of each and every Guaranteed Obligation, term, condition and covenant of the Agreement to be performed with respect to the Guaranteed Obligations, respectively. Without limiting the generality of the foregoing, Guarantor expressly waives any and all benefits under California Civil Code sections 2809, 2810, 2819, 2839, 2845, 2846, 2848, 2849, 2850, 2855, 2899 and 3433, including but not limited to (x) any rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor by reason of Sections 2787 to 2855 of the California Civil Code, inclusive; (y) any rights or defenses Guarantor may have in respect of his or her obligations as guarantor or surety by reason of any election of remedies by the creditor; and (z) Guarantor waives all rights and defenses that the guarantor may have because the principal's debt is secured by real property. This means, among other things: (1) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the Subdivider. (2) If the creditor forecloses on any real property collateral pledged by the Subdivider: (i) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price. (ii) The creditor may collect from the Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Subdivider. This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Subdivider's debt or obligation is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

5. Further Assurances. Guarantor agrees to do all such things and execute all such documents as City may consider necessary or desirable to give full effect to this Guaranty and to perfect and preserve the rights and powers of City hereunder; provided, however, that the same shall not increase Guarantor's obligations or liabilities, or decrease Guarantor's rights. Guarantor acknowledges and confirms that Guarantor itself has established its own adequate means of obtaining from the Subdivider on a continuing basis all information desired by Guarantor concerning the financial condition of the Subdivider and that Guarantor will look to the Subdivider to keep adequately informed of its financial condition.

6. Independent Obligations; Continuing Guaranty. This Guaranty is a primary and original payment and performance obligation of Guarantor and is absolute, unconditional,

continuing and irrevocable. No member, officer, partner, shareholder, director, board member, agent, or employee of Guarantor will be personally liable to City, and City will have no recourse against any of the foregoing, in the event of a default by Guarantor or for any amount which may become due to City or on any obligations under the terms of this Guaranty or any claim based upon this Guaranty.

7. Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law or any judgment, order or decision thereunder, City must rescind or restore any payment, or any part thereof, received by City, any prior release or discharge from the terms of this Guaranty shall be without effect, and this Guaranty will remain in effect as if the payment had not been made to City.

8. Assignment. This Guaranty is for the benefit of City and its successors and assigns, and is binding upon Guarantor. Subject to the terms of Section 20 of this Guaranty, Guarantor may not assign or transfer any of its obligations under this Guaranty, whether by operation of law or otherwise, without the prior written consent of City in its sole discretion.

9. Representations and Warranties. Guarantor represents and warrants to City that (a) the execution, delivery and performance of this Guaranty by Guarantor have been duly authorized by all requisite action of Guarantor and do not require the consent of any governmental agency or other third party which has not been obtained, (b) this Guaranty has been duly executed and delivered to City, (c) Guarantor is subject to civil and commercial law with respect to its obligations under this Guaranty and enjoys no immunity, sovereign or otherwise, from any suit or proceeding, the jurisdiction of any court, recoupment, setoff or legal process (and hereby waives any defense of immunity to the extent available to Guarantor), (d) no taxes are imposed by virtue of Guarantor's execution or delivery of this Guaranty other than any payable by Guarantor and which have already been paid, and (e) this Guaranty is a legal and binding obligation of Guarantor and is enforceable in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

10. Payments. All payments by Guarantor under this Guaranty shall be made (a) in U.S. dollars to such account in the United States as City may from time to time designate to Guarantor and (b) free and clear of, and without deduction or withholding for or on account of any present or future income, stamp or other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by an governmental authority (collectively "Taxes"). If any Taxes are required to be withheld from any amounts payable by Guarantor under this Guaranty, the amounts payable shall be increased to the extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guaranty.

11. Subrogation. If Guarantor makes any payment to City as a part of the Guaranteed Obligations pursuant to this Guaranty, then Guarantor shall be subrogated to the rights of City against the Subdivider or others with respect to such paid Guaranteed Obligations, and City agrees to take such steps as Guarantor may reasonably request to implement such subrogation (provided Guarantor shall pay City all costs actually incurred with respect thereto pursuant to the Agreement and that City shall not incur any liabilities in taking any such steps).

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without regard to any of conflict of laws rule that would require the application of laws other than those of the State of California.

13. Consents.

(a) GUARANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY CALIFORNIA STATE OR FEDERAL COURT SITTING IN SAN FRANCISCO, CALIFORNIA, IN THE UNITED STATES OF AMERICA IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY. GUARANTOR WAIVES ANY OBJECTION TO VENUE IN SAN FRANCISCO, CALIFORNIA AND ANY OBJECTION TO ANY ACTION OR PROCEEDING ON THE BASIS OF FORUM NON CONVENIENS. FINAL JUDGMENT AGAINST GUARANTOR IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION.

(b) Guarantor acknowledges and agrees that City, by action or inaction, in its sole and absolute discretion and without notice to Guarantor, may refuse or fail to enforce all or any portion of City's rights, powers or remedies under this Guaranty, the Agreement or any related documents without releasing, discharging, impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the validity or enforceability of this Guaranty. Further, Guarantor acknowledges and agrees that City, in its sole and absolute discretion and without notice to Guarantor may additionally: (a) compromise, settle, extend the time for payment or performance of all or any part of the Guaranteed Obligations; and (b) deal in all respects with Guarantor as if this Guaranty were not in effect. It is the intent of the Guarantor that Guarantor shall remain liable for the payment and performance of the Guaranteed Obligations and all other obligations guaranteed hereby to the extent set forth herein, notwithstanding any act or thing that might otherwise operate as a legal or equitable discharge of a surety other than payment or performance of the applicable Guaranteed Obligations.

14. Process Agent. Guarantor hereby irrevocably and unconditionally appoints the party(ies) identified as the addressee(s) for receipt of notices for Guarantor under this Guaranty, with offices on the date hereof at the respective addresses set forth in Section 17 below, as its agent for service of process ("**Process Agent**") of any summons or other legal process in any action or proceeding arising out of or relating to this Guaranty, and such agent is hereby authorized and directed to accept such service on behalf of Guarantor. Guarantor shall at all times maintain a Process Agent in the State of California, as a Process Agent to receive service of process. Guarantor shall notify City prior to any change of Process Agent.

15. Partial Invalidity. If any provision of this Guaranty is found by a court of competent jurisdiction to be prohibited, illegal, invalid, inoperable or unenforceable, such prohibition, illegality, invalidity, or inoperability shall not affect the remainder thereof or any other clause, provision or section, and each such clause, provision or section shall be deemed to be effective and operative in the manner and to the full extent permitted by law.

16. Attorneys' Fees and Costs. If Guarantor or City institute any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any

provision of this Guaranty, then the party not prevailing in such dispute will pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Guaranty, including, without limitation, court costs and reasonable attorneys' fees and disbursements; reasonable expert witness fees and reasonable costs and expenses; transcript preparation fees and costs; document copying expenses; exhibit preparation costs; carrier expenses and postage and communications expenses; such amount as a court or other decision maker may adjudge to be actual and reasonable attorneys' fees for the services rendered in such action or proceeding; actual and reasonable fees and costs associated with execution upon any judgment or order; and actual and reasonable costs on appeal and any collection efforts (the "Attorneys' Fees and Costs"). For purposes of this Guaranty, the Attorneys' Fees and Costs shall include the fees and costs of in-house counsel, including, in the case of the City, the Office of the City Attorney of the City and County of San Francisco, and will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office..

17. Notices. Any demand, notice or other communication under this Guaranty shall be in writing and shall be delivered by hand, sent by overnight mail or courier. Any communication to City shall be effective upon receipt and shall be delivered or sent to:

Executive Director
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111

Director of Public Works
City and County of San Francisco
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Mission Rock Project

With copies to:

Port General Counsel
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111

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

Any notices sent by City to Guarantor shall be deemed effective upon receipt and shall be delivered or sent to the following address(es) (and/or to such other addresses as Guarantor may identify as its address(es) for receipt of notices under this Guaranty in written notice to City):

c/o Tishman Speyer
45 Rockefeller Plaza
New York, New York 10111
Attention: Chief Financial Officer
Email: CFO@tishmanspeyer.com

and to:

c/o Giants Development Services LLC
24 Willie Mays Plaza
San Francisco, California 94107
Attention: Chief Executive Officer
Email: lbaer@sfgiants.com

with copies to:

Tishman Speyer
45 Rockefeller Plaza
New York, New York 10111
Attention: General Counsel
Email: GeneralCounsel@tishmanspeyer.com

and to:

Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Attn: Matthew S. Gray
Email: MGray@perkinscoie.com

18. Entire Agreement. This Guaranty shall be the final expression of the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. This Guaranty shall constitute the complete and exclusive statement of its terms. Other than the Agreement, no extrinsic evidence (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Guaranty.

19. Interpretation of Guaranty. Unless otherwise specified, whenever in this Guaranty reference is made to any Section, or any defined term, the reference shall be deemed to refer to the Section or defined term of this Guaranty. Any reference to a Section includes all subsections and subparagraphs of that Section. The use in this Guaranty of the words “including”, “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as “without limitation” or “but not limited to”, or words of similar import, is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. In the event of a conflict between the Recitals and the remaining provisions of the Guaranty, the remaining provisions shall prevail. Any titles of the several parts and Sections of this Guaranty are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. References to days, months and years mean calendar days, months and years unless otherwise specified. References to any law, specifically or generally, will mean the law as amended, supplemented or superseded from time to time. The provisions of this Guaranty shall be construed as a whole according to their common meaning in order to achieve the objectives and purposes of Guarantor and City, regardless of who drafted this Guaranty.

20. Substitute Security.

(a) Substitute Security. If at any time during the period this Guaranty is in effect, the Net Worth of Guarantor in the aggregate falls below Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000) (the “**Net Worth Requirement**”) or Guarantor causes or allows to occur a Significant Change (as defined in Section 20(b) below) (each, a “**Substitute Security Event**”), then Guarantor shall notify City as soon as reasonably practicable. “**Net Worth**” means Guarantor's net worth (shareholder equity for a corporation or member equity for a limited liability company), calculated in accordance with GAAP or the income tax basis of accounting consistently applied. A Significant Change with respect to Guarantor will not constitute a Substitute Security Event as long as the Guarantor meets the Net Worth Requirement; provided, however in the event of a Significant Change pursuant to Section 20(b)(iv), the Net Worth Requirement shall not be considered to be met unless the Guarantor satisfies or bonds the judgment(s) within twenty (20) days. Upon the occurrence of a Substitute Security Event, Subdivider is required under the Agreement to supply City with a substitute guaranty (in the form of this Guaranty), an unconditional irrevocable standby letter of credit, or other form of security, in each case: (i) in favor of City; (ii) in form and substance, and issued by persons or entities, reasonably satisfactory to City (including satisfaction of the Net Worth Requirement); (iii) in the amount of one hundred percent (100%) of the Guarantor's maximum liability for the Guaranteed Obligations; and (iv) to remain in effect until the Extended Warranty Period (as that term is defined in the Agreement) has concluded, except that if City has delivered a Notice of Warranty Work with respect to any Failure identified by City during the Extended Warranty Period, the security shall continue in full force and effect until such Failure has been corrected (“**Substitute Security**”). If Subdivider does not supply City with the Substitute Security within the time period required by the Agreement, City may notify Guarantor and Guarantor shall provide such Substitute Security within ten (10) days after City’s notice. Failure of City to give notice of Subdivider's failure to provide the Substitute Security shall not relieve

Guarantor of its obligations hereunder. It shall be a default of Guarantor under this Guaranty, and a default of Subdivider under the terms of the Agreement, if Guarantor fails to provide the Substitute Security within ten (10) days after City's notice. Upon Subdivider or Guarantor providing the Substitute Security required under this Section 20(a), City shall promptly return this Guaranty and Guarantor shall be released from any liability hereunder.

(b) Significant Change. For purposes of Section 20(a) above, "**Significant Change**" means (i) Guarantor files a petition for bankruptcy, or makes a general assignment for the benefit of its creditors, (ii) a receiver is appointed on account of Guarantor's insolvency, (iii) a writ of execution or attachment or any similar process is issued or levied against any bank accounts of Guarantor, or against any substantial portion of any property or assets of Guarantor, unless a writ of execution is dismissed within ninety (90) days and a writ of attachment is dismissed within thirty (30) days, (iv) a final non-appealable judgment is entered against Guarantor in an amount in excess of ten percent (10%) of the Guarantor's Net Worth and the Guarantor does not satisfy or bond the judgment within twenty (20) days, or (v) without the consent of Guarantor, an application for relief is filed against Guarantor under any federal or state bankruptcy law, unless the application is dismissed within ninety (90) days.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed as of the date shown above.

ACCEPTED:

PORT OF SAN FRANCISCO

Executive Director

EXHIBIT A

GUARANTEED OBLIGATIONS

(d) The Guaranteed Obligations consist of, and are limited to, the obligations of Subdivider under Subsections 8(c)(i), 8(c)(ii), and 8(c)(iii) of the Agreement. The total liability of Subdivider and Guarantor for the Guaranteed Obligations shall not exceed the Extended Warranty Amount, as defined in Section 8(c)(ii) of the Agreement.

EXHIBIT J

Insurance Program

1.1 SUBDIVIDER'S LIABILITY INSURANCE

The Subdivider shall be permitted to use either an OCIP or a CCIP program to meet any of the insurance requirements in Exhibit J.

- A. Subdivider shall maintain, or cause its contractors or agents to maintain, in full force and effect, for the period covered by the Contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
 - 1. As applicable, Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000 each accident, injury, or illness, including if applicable, coverage for U.S. Long Shore and Harbor Workers' Act benefits and Jones Act benefits, and Federal Employers Liability Act.
 - 2. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Subdivider, its employees, agents and subcontractors. Commercial General Liability insurance with limits not less than \$100,000,000 each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, products, and completed operations.

1.2 ADDITIONAL COVERAGES

A. **Builder's Risk Insurance:** Subdivider shall provide "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis as follows:

- (1) **Amount of Coverage:** The amount of coverage shall be equal to the full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders for each phase of the project until the issuance of the last Notice of Completion for that phase. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," such as but not limited to design and engineering fees, code updates, permits, bonds, insurances, and inspection costs caused by an insured peril; the policy may limit the amount for soft costs but such limit shall not be less than 5% of the coverage amount.
- (2) **Parties Covered:** The Builder's Risk policy shall identify the City and

County of San Francisco as a loss payee as its interests may appear.
Each insured shall waive all rights of subrogation against each of the other insureds to the extent that the loss is covered by the Builder's Risk Insurance.

- A. Professional Liability Insurance: In the event that Subdivider employs professional services for performance under this agreement Subdivider shall require the retained professionals to carry professional liability insurance with limits not less than \$5,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Subdivider's professional liability policy should not have an exclusion for environmental compliance management or construction management professionals.
- B. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Subdivider or its subcontractors is required to perform abatement or disposal of such materials, then the Subdivider, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$10,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

1.3 INSURANCE FOR OTHERS

- A. For general liability, environmental pollution liability and automobile liability insurance, Subdivider shall include as additional insured, the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
- B. As applicable, Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000 each accident, injury, or illness, including if applicable, coverage for U.S. Long Shore and Harbor Workers' Act benefits and Jones Act benefits, and Federal Employers Liability Act.
- C. Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

1.4 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded

thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

- B. Except for professional liability insurance, Should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
- C. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 5 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- D. Each such policy shall provide that no cancellation or non-renewal shall occur without the carrier giving to the City at least 30 days' written notice prior thereto. All notices shall be made to:

- E. Subdivider, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new, or renewed policy at least 10 days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.
- F. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Contract.

1.5 QUALIFICATIONS

- A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.