

**City and County of San Francisco**  
**London Breed, Mayor**

**MEMORANDUM OF UNDERSTANDING M-XXXX**

BY AND BETWEEN

**THE SAN FRANCISCO PORT COMMISSION**

AND

**HANSON AGGREGATES MID-PACIFIC, INC.**

REGARDING

DONATION OF MATERIAL

**AGREEMENT REGARDING DONATION OF MATERIAL**

**THIS AGREEMENT REGARDING DONATION OF MATERIAL ("Agreement")** is made as of the [ ] day of [ ], 2021, in the City and County of San Francisco, State of California, by and between **HANSON AGGREGATES MID-PACIFIC, INC.**, a Delaware corporation, ("**Donor**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**CITY**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**").

**RECITALS**

**A.** At its leasehold under Lease No. L-12839 with Donor as tenant for Port premises at Pier 92 ("**Port Lease**"), Donor produces marine sand from San Francisco Bay. This sand is primarily used in the manufacture of concrete and asphalt products, and to a lesser extent is also used for drainage, erosion control, base material, backfill, and other uses. As further described in this Agreement, Donor's process of screening the materials produced from central San Francisco Bay to produce these commercially valuable products generates a mixed gravel and shell material ("**Beach Material**") that, due to its physical properties, is not suitable for Donor's commercial or industrial use under current market conditions. This Beach Material byproduct is currently removed by truck for final disposal.

**B.** In order to construct the stabilized shoreline element of the Port's Heron's Head Park Resilience Project, the Port requires approximately 12,000 cubic yards of coarse material that has the same physical characteristics as the Beach Material. During the course of the Port's community outreach regarding the Heron's Head Park Shoreline Resilience Project, Port and Donor recognized an opportunity to use Donor's byproduct as Port's construction material, thereby reducing project construction cost by an estimated \$417,000 and reducing truck travel and related emissions associated with hauling Donor's material off-site and importing Port's required construction material.

**C.** Donor has offered to donate up to 12,000 cubic yards of Beach Material to Port through delivery of the material to a site designated by Port. Port has identified a site on Port property at Seawall 352 as appropriate for stockpiling the Beach Material. The site is located near Donor's leased premises at Pier 92 and is identified on **EXHIBIT A** (the "**Storage Site**").

**D.** On [TBD], 2021, the San Francisco Port Commission adopted Resolution No. [TBD] authorizing the acceptance of the Beach Material from Donor and approving this Agreement.

**E.** On [TBD], 2021, as required by San Francisco Administrative Code Section 10.100-305(b), the San Francisco Board of Supervisors ("**Board of Supervisors**") adopted Resolution No. [TBD] authorizing the acceptance of the Beach Material from Donor and approving this Agreement.

**F.** Port and Donor now desire to enter into this Agreement for the gift by Donor to Port of Beach Material in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

**1. TERM.** This Agreement shall become effective on the date of Port's execution of this Agreement following approval by the Port Commission, the Board of Supervisors and the San Francisco Mayor, each in their respective sole and absolute discretion (the "**Effective Date**") and shall expire upon the earlier of (i) delivery of 12,000 cubic yards of Beach Material to the Storage Site; (ii) the date of termination by either party pursuant to the terms of this Agreement; or (iii) January 31, 2023 ("**Expiration Date**") (the "**Term**"). The parties shall document the actual Expiration Date through a countersigned memorandum, but either party's failure to do so shall not affect the expiration of the Term.

**2. DONATION; WARRANTIES; ACCEPTANCE.**

**2.1. Donation and Acceptance.**

(a) Port is an agency of the City and County of San Francisco, a municipal corporation. It is the intent of the parties that the donation of the Beach Material be made and used in compliance with all applicable federal and state laws governing donations made to municipal organizations. The parties acknowledge that they may be required by law to report information about the Beach Material donated under this Agreement and will do so to comply with legal obligations.

(b) Donor grants Port irrevocable ownership, rights, title, and interest in the Beach Material, upon the terms and conditions set forth in this Agreement, and without any monetary payment to Donor. The Beach Material will be transferred to Port free and clear of any liens, claims, or encumbrances.

(c) Subject to the terms and conditions set forth in this Agreement, Donor agrees to donate and deliver to the Storage Site, at Donor's sole cost and expense and without charge to Port, a total of approximately 12,000 cubic yards of Beach Material that meets the specifications set forth in Section 2.4. Port agrees to accept such Beach Material at the Storage Site with no cost to Donor related to use of the Storage Site for the purpose of this Agreement.

**2.2. Warranties.** Donor represents and warrants to Port that Donor is the lawful owner of the Beach Material, that such Beach Material is free and clear of all encumbrances, and that Donor has good right to donate the same and will warrant and defend the title thereto unto Port, its successors and assigns, against the Claims of all persons whomsoever. The Donor further represents and warrants to the Port that all material delivered by Donor to the Storage Site will meet the specifications set forth in Section 2.4 and that Donor will bring no other material to the Storage Site. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 2.2, THE BEACH MATERIAL IS PROVIDED TO PORT ON AN "AS IS" BASIS, AND DONOR MAKES NO WARRANTY OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTIES OF WHATEVER KIND ARE HEREBY DISCLAIMED BY DONOR AND EXCLUDED. Donor's representations and warranties set forth in this Section shall survive the expiration or earlier termination of this Agreement.

**2.3. Commercial Market.** The parties agree that, if a commercial market for the Beach Material or opportunity to sell the Beach Material arises during the Term, Donor will promptly notify Port and enter into good faith negotiations with Port for the sale of Beach Materials at a negotiated comparable market rate prior to selling the Beach Materials to a third party. Nothing in this Section affects the other rights and obligations of the parties, including a party's right to terminate this Agreement under Section 8; provided, however, that if Donor decides to exercise its right to terminate in order to sell the Beach Materials to a third party, Donor agrees to negotiate in good faith with Port for a minimum period of sixty (60) days to allow Port adequate time to make a competitive offer.

**2.4. Specifications.** Beach Material will be sourced from an approximately one square mile area located between Angel Island and the Golden Gate Bridge where tides and currents deposit sand and gravel. Donor has a lease from the California State Lands Commission and permits from the State Lands

Commission, U.S. Army Corps of Engineers, Regional Water Quality Control Board, and Bay Conservation and Development Commission to extract material from the Bay floor. Donor transports the extracted material by barge to its leased premises under the Port Lease, during which time saltwater and sediment drain from the extracted material. At the Port leased premises, Donor rinses the material with freshwater as it is unloaded by conveyor from barge to land. The material is washed again with freshwater as it is conveyed over a 3/8" screen that separates the sand that comprises Donor's commercial product from larger grain-size/coarse material. During transport and subsequent washing and sorting, salt, fine sediment, and other adhered material is removed from the coarse sand/gravel material. Donor does not market the coarse material (greater than 3/8 inch or 9.5 mm in diameter) that is separated from the commercially valuable sand and manages it as a byproduct of its production process. The Beach Material delivered to the Port will consist primarily of coarse gravel with incidental quantities of larger gravel and shell and will have a median diameter of 10 mm.

**2.5. Access, Use of Storage Site.** Donor shall have access to the Storage Site for the sole purpose of delivering, unloading and stockpiling Beach Material. Donor's use of the Storage Site shall be subject to the terms and conditions set forth in Section 4. Donor shall be responsible for locking the gate to the fenced area that includes the Storage Site when not in active use. During any period that Donor uses the Storage Site under a lease or license agreement with Port, Donor shall have all rights, obligations and liabilities under such lease or license which terms shall govern in the event of any conflict with the terms of this Agreement. Donor agrees to protect its officers, directors, employees, agents, contractors and invitees, and their respective heirs, legal representatives, successors, and assigns (collectively, "Agents") in its operations on the Storage Area from known hazards associated with such activities.

**2.6. Use of Beach Material by Port.** Port shall not use the Beach Material for the benefit of any individual, owner, shareholder, officer, director, or employee of Port.

**2.7. Delivery Schedule.** Donor shall deliver Beach Material to the Storage Site as it is generated by Donor's process and at Donor's convenience.

**2.8. Title.**

(a) Title to and the risk of loss, damage and destruction of the Beach Material shall remain with Donor until the Beach Material is unloaded and placed in a stable stockpile at the Storage Site. Port will acquire title to and the risk of loss, damage and destruction of any Beach Material upon completion of such delivery and placement at the Storage Site.

(b) Port may reject the Beach Material before Donor unloads it at the Storage Site in accordance with Section 3 below.

**2.9. Dust Control.** Donor agrees that Beach Material delivered to the Storage Site will first be screened to remove fine particles capable of creating dust.

**2.10. Stockpile Maintenance.** Donor shall be responsible for placing Beach Material in stable stockpiles at the Storage Site.

**2.11. Recordkeeping.** Donor will maintain books and records relating to this Agreement in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow Port to audit Donor's records regarding the donation and to verify the quantity and value of materials donated under this Agreement. Donor shall make such books and records available to Port (or its representatives) upon commercially reasonable prior written notice.

**2.12. Competent Personnel.** The Permitted Activities shall be performed only by competent personnel under the supervision of and in the employment of Donor.

**3. INSPECTIONS; REJECTION OF MATERIALS.**

Port, at its election and at its sole cost, may conduct inspections at the site of generation, observe loading, unloading and stockpiling of Beach Material, and conduct tests at any location to determine if the Beach Material meets the specifications described in Section 2.4 including without limitation on Donor's leased premises. If Port, in its sole discretion, determines that the Beach Material does not meet the

specifications described in Section 2.4 or is unsuitable for Port's use for any other reason, Port may reject such material before it is unloaded at the Storage Site. Immediately upon notice of rejection by Port, Donor shall not unload the material and shall cease all deliveries to the Storage Site until further notice by Port. Unless Port rejects delivery prior to unloading of any materials at the Storage Site, Port will be deemed to accept such delivered Beach Materials. Port may not reject or return Beach Material that has been unloaded at the Storage Site in accordance with this Agreement to the Donor.

#### **4. USE OF STORAGE SITE.**

**4.1. Permitted Activities.** Subject to the terms and conditions set forth in this Agreement, Port grants to Donor and its Agents a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the Storage Site for the sole purposes of carrying out the activities specified in Section 2 (collectively, the "**Permitted Activity**") only on a temporary basis during the Term. Any other use in, on or around the Storage Site or surrounding or adjacent Port property shall be strictly prohibited, including but not limited to, use of the Storage Site for Donor's own purposes, placement on the Storage Site of any materials other than Beach Material donated to Port, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic).

**4.2. Damage to Storage Site.** Except as to the Permitted Activities or as explicitly provided herein, Donor has no responsibility or liability of any kind with respect to the Storage Site. In the event that Donor or its Agents cause any damage to the Storage Site or any other Port property, Donor shall be responsible, and Port may, at its sole and absolute discretion, elect to repair and restore the same itself or require Donor to repair and restore the same, all at Donor's sole cost and expense. Upon receipt of any invoice from Port for reasonable, actual costs incurred by Port related to any repair performed by Port in accordance with this Section, Donor shall immediately reimburse Port therefor.

**4.3. Disclosures.** Donor acknowledges that Port has made no representations or warranties concerning the Storage Site, including without limitation, the seismological condition thereof. Donor acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials, and shall be deemed to have inspected the Storage Site and accepted it its "**As Is**" condition and as being suitable for the conduct of Donor's activity thereon.

#### **4.4. Hazardous Materials Handling.**

**(a)** For purposes of this Agreement, "**Hazardous Material**" means any substance, waste, or material that is now or in the future designated or defined by any regulatory agency in sufficient quantity to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any applicable law, regulation, governmental order, permit, or approval as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos containing materials, presumed asbestos containing materials and other naturally occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

**(b)** Neither Donor nor its Agents may knowingly introduce, handle, deliver, place, store, or dispose any Hazardous Material in, on, under or about the Storage Site. Donor agrees to immediately notify Port if it learns or has reason to believe that any quantity of Hazardous Materials is present on the Storage Site whether or not such presence is a result of Donor's activities. Donor must promptly provide Port with a copy of any notice, violation or claim by any person or regulatory agency regarding the discovery or presence of Hazardous Materials at the Storage Site.

**4.5. Hazardous Materials Disclosure.** California Law requires landlords to disclose the presence or potential presence of certain Hazardous Materials. Accordingly, Donor is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Storage Site, including, but not limited to vehicle fluids, asbestos, naturally occurring radionuclides, lead and formaldehyde. [Further, the Hazardous Materials described in the reports listed in *Schedule 1* attached hereto, copies of

which have been delivered to or made available to Donor. By execution of this Agreement, Donor acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related laws. Donor must disclose the information contained in this Section to its Agents conducting Permitted Activities. Donor also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

**4.6. Rules and Restrictions.** Donor and its Agents shall comply with all rules, regulations, or restrictions pertaining to the Storage Site that the Port may adopt from time to time.

## **5. COMPLIANCE WITH LAWS.**

**5.1.** Donor, at Donor's sole cost and expense, shall comply with all applicable present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy and regulatory approval relating to or affecting the Permitted Activities and/or the Storage Site whether in effect when this Agreement is executed or at any later time and whether or not within the present contemplation of the parties.

**5.2.** Donor shall keep itself fully informed of Port's Charter, codes, ordinances and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement including without limitation, the requirements of SF Administrative Code §10.100.205 et seq. and Section 67.29-6 of the City's Sunshine Ordinance.

**5.3.** San Francisco Administrative Code Section 67.29-6 requires Port to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all donations received under this Agreement, the disclosure must identify Donor as the contributor, the amounts contributed, and a statement as to any financial interest Donor has involving the City, including any contract, grant, permit, permit application, or other entitlement. Under the Administrative Code, Port must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from Donor in any resolution submitted to the Board of Supervisors for approval.

**5.4.** Donor agrees to comply with San Francisco Administrative Code Section 67.29-6, to file all required reports with the Board of Supervisors and City's Controller and to provide all information requested by Port to enable Port to comply with its obligations regarding the amounts and sources of funding under the Sunshine Ordinance, including but not limited to a statement as to any financial interest Donor has involving the City, including any contract, grant, permit, permit application, or other entitlement. Donor will post this Agreement on its website. Port will provide a link to Donor's website for the public to readily access this information from Port's website.

**6. PAYMENT OF TAXES AND OTHER EXPENSES.** Donor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Donor's or its Agent performing services and work. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Port and Donor or any Agent of Donor. Any terms in this Agreement referring to direction from Port shall be construed as providing for direction as to policy and the result of Donor's work only, and not as to the means by which such a result is obtained. Port does not retain the right to control the means or the method by which Donor performs work under this Agreement.

## **7. MUTUAL WAIVER AND RELEASE.**

In consideration of the relative risks, liabilities and obligations of each party under this agreement, each of Donor and Port hereby waives any and all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific

performance, or any other relief (“Claims”) arising out of or related to this Agreement or the Beach Material donated hereunder whether arising out of the negligence of the Donor or Port or otherwise, but excluding any Claims: (i) caused solely by the willful misconduct or gross negligence of the other party; and (ii) by a third party against the Port or Donor arising out of or related to this Agreement or the Beach Material donated hereunder. Except as provided herein, neither party shall be responsible for or liable to the other, and each party assumes the risk of, and waives and releases the other party from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property from any cause whatsoever. Each party understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, each party waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each party specifically acknowledges and confirms the validity of the release made above and the fact that it was represented by counsel who explained the consequences of the release at the time this Agreement was made, or that Donor had the opportunity to consult with counsel, but declined to do so. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

**8. TERMINATION FOR CONVENIENCE.**

**8.1.** Each party shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. A party shall exercise this option by giving reasonable prior written notice of termination to the other party, provided that such notice shall not be less than thirty (30) days prior to the termination date. The notice shall specify the date on which termination shall become effective.

**8.2.** Upon sending or receipt of a termination notice, Donor shall immediately cease delivery of Beach Materials to the Storage Site and the parties shall commence and perform, with diligence, all other actions necessary to effect the termination of this Agreement on the termination date specified. Donor shall have no obligation to remove any Beach Materials from the Storage Site in the event Port terminates this Agreement for convenience under this Section 8.

**9. CONFLICT OF INTEREST.** Through its execution of this Agreement, Donor acknowledges that it is familiar with the provision of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify Port if it becomes aware of any such fact during the Term.

**10. NOTICE.**

Any notices, demands, consents, approvals, and requests given under this Agreement shall be in writing and given by (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid, to the mailing address listed below or any other address notice of which is given. Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

To Port: The San Francisco Port Commission  
Pier 1  
San Francisco, CA 94111

Attn: Carol Bach  
Phone No.: 415-274-0400  
Email: carol.bach@sfport.com

With Copies To: The City Attorney's Office  
Pier 1  
San Francisco, CA 94111  
Attn: General Counsel  
Phone No.: 415-274-0400  
Fax No.: 415-274-0494

To Donor: Hanson Aggregates Mid-Pacific, Inc.  
Attn: Michael Bishop  
300 Executive Pkwy., #240  
San Ramon, CA 94583  
Facsimile: 925-244-6585  
Email: michael.bishop@lehighhanson.com

All notices under this Agreement shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

**11. INDEPENDENT RELATIONSHIP OF THE PARTIES.** Port shall not be liable for any act of the Donor and Donor shall not be liable for any act of Port, and nothing herein contained shall be construed as creating the relationship of employer and employee between Port and Donor or any of their respective agents or employees. Donor has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this Agreement. Donor agrees to be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this Agreement shall be deemed to render the Port a partner in Donor's business, or joint venture or member in any joint enterprise with Donor.

**12. NON-WAIVER OF RIGHTS.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**13. LOCAL BUSINESS ENTERPRISES.** The Port Commission encourages the participation of local business enterprises (LBEs) in Donor's operations. Donor agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

**14. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS.** If this Agreement is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section shall apply. Through its execution of this Agreement, Donor acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Donor

acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Donor further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Donor; each member of Donor's board of directors, and Donor's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Donor; and any subcontractor listed in the Donor's bid or contract. Additionally, Donor certifies that if this Section 21.13 applies, Donor has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

**15. DONOR'S COMPLIANCE WITH CITY BUSINESS AND TAX REGULATIONS CODE.** Donor acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Donor under this Agreement is withheld, then Port will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Donor, without interest, late fees, penalties, or other charges, upon Donor coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**16. MISCELLANEOUS.**

**16.1. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**16.2. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**16.3. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**16.4. Entire Agreement.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written provisions.

**16.5. No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against Port or Donor by any third person with respect to the performance of any duties or other projects being undertaken by the parties. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

**16.6. Authority.** If Donor signs as a corporation or a partnership, each of the persons executing this Agreement on behalf of Donor does hereby covenant and warrant that Donor is a duly authorized and existing entity, that Donor has and is qualified to do business in California, that Donor has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Donor are authorized to do so. Upon Port's request, Donor shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

**16.7. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**16.8. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule



that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**16.9. Public Announcements.** Donor and Port each reserve the right to make public announcements and communicate with any news media regarding this Agreement and the donation of the Beach Material with prior consent of the other party, which consent shall not be unreasonably withheld. This Section does not apply to or affect either party's obligation to report information, provide disclosures or take other actions as required by applicable laws or to otherwise comply with their respective legal obligations. This Section shall survive expiration or termination of this Agreement.

**EXHIBIT A     STORAGE SITE**

**SCHEDULE 1    HAZARDOUS MATERIALS DISCLOSURE**

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day first mentioned above.

**DONOR:**

**HANSON AGGREGATES MID-PACIFIC, INC.**, a Delaware corporation

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

**PORT:**

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By:  
Elaine Forbes\_\_  
Executive Director  
Date: \_

Approved as to Form  
Dennis J. Herrera  
City Attorney

BY: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

Port Commission Resolution No.: xx-xxx

Board of Supervisors Resolution No.:

**EXHIBIT A  
STORAGE SITE**