

## CONDITIONAL ASSIGNMENT OF WARRANTIES AND GUARANTIES

FOR VALUE RECEIVED, MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C., a Delaware limited liability company ("**Developer**"), does hereby conditionally assign to the City and County of San Francisco (acting by and through its agencies, boards, departments, and commissions, including the Port of San Francisco) (collectively, "**City**"), to the extent permissible, all of its right, title and interest in and to any and all warranties and guaranties (individually a "**Warranty**", and collectively, "**Warranties**") applicable to the improvements set forth on Exhibit A attached hereto and incorporated herein by this reference (the "**Acquisition Facilities**").

This Conditional Assignment of Warranties and Guaranties (the "**Assignment**") is being made in connection with Section 4.1(e)(ii) of that certain Acquisition Agreement and Reimbursement Agreement dated for reference purposes as of August 15, 2018, by and between the City and County of San Francisco acting by and through the San Francisco Port Commission ("**Port**") and Seawall Lot 337 Associates, LLC (as may be further supplemented or amended from time to time, the "**Acquisition Agreement**").

The parties hereto agree that if the City or any of its respective successors and/or assigns exercise any right of repair, warranty, guaranty, or other right against Developer, if any, with respect to an Acquisition Facility which is also the subject of a Warranty, Developer, at its option, without any requirement that it do so, may enforce the Warranty. If Developer elects to enforce the Warranty, Developer shall provide notice to the City within ten (10) business days of receipt of notice that the City or any of its respective successors and/or assigns are exercising a right of repair, warranty, guaranty, and/or similar right with respect to the Acquisition Facility. If Developer fails to provide such notice to the City within ten (10) business days, or otherwise fails to diligently pursue the Warranty thereafter, the City shall have the sole right and privilege to enforce the Warranty.

This Assignment shall be binding upon and inure to the benefit of the successors and assigns of Developer and the City.

A notice or communication under this Assignment by any party to any other party 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 City:

Director of Public Works  
City and County of San Francisco  
49 South Van Ness Avenue, Suite 1600  
San Francisco, CA 94103  
Reference: Mission Rock Project

With a copy to:

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

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

Mission Rock Horizontal Sub (Phase 1), L.L.C.  
24 Willie Mays Plaza  
San Francisco, CA 94107  
Attn: Julian Pancoast

with a copy to:

Perkins Coie LLP  
505 Howard Street, Suite 1000  
San Francisco, CA 94105  
Attn: Garrett Colli

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 Assignment 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.

This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

The terms of this Assignment may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

The waiver or failure to enforce any provision of this Assignment shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of California.

Nothing in this Assignment shall be construed in any way to alter, amend or otherwise relieve Developer of its warranty or guaranty responsibilities, with respect to any improvements, under the Mission Rock Project documents or subsequent permits.

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 2021.

**DEVELOPER:**

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

By: Sewall 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: Carl Shannon  
Its: Authorized Signatory

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## Exhibit A

### **List of Acquisition Facilities**

The facilities include the 12 kilovolt electric line improvements and ancillary facilities constructed or installed by or on behalf of DEVELOPER pursuant to Instructional Bulletin (IB) #3, dated March 10, 2021, and IB#3 Revision 1, dated March 19, 2021, proposing amendments to Public Works Street Improvement Permit (SIP) No. 20IE-00486, conditionally approved on March 19, 2021, for said improvements, and the improvement plans and specifications described therein. The list of facilities delivered to and on file with the City is as follows:

Joint Trench & Dry Utilities - includes, but is not limited to, installation of primary and secondary conduits, overhead poles, pull boxes, vaults, subsurface enclosures, gas main, and anodes for dry utilities including electrical, gas, telephone, cable, internet, and information systems, as well as any payment obligations related to providing such services.