

WATER PURCHASE AGREEMENT

This Water Purchase Agreement (“**Agreement**”) is made and entered into in San Francisco, California, as of this ____ day of _____, 20____, between Mission Rock Utilities, Inc., a Delaware non-stock corporation (“**MRU**”), and the City and County of San Francisco, a municipal corporation and charter city (“**City**”), acting by and through the San Francisco Port Commission (“**Port**”) (each a “**Party**” and together, the “**Parties**”), and provides as follows:

RECITALS:

A. Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successor’s and assigns, “**Master Developer**”), and the Port, are parties to that certain Disposition and Development Agreement dated as of August 15, 2018 (the “**DDA**”) and that certain Lease No. L-16417 dated as of August 15, 2018 (the “**Master Lease**”). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as “Mission Rock” located in the City and County of San Francisco, State of California and as more particularly described in the DDA and Master Lease (the “**Project Site**”). Master Developer is responsible for the design and construction of the horizontal improvements (i.e., utilities, streets, parks, etc.) that will support the public’s use of and access to the waterfront and the public areas to be developed within the Project Site and the development of commercial and residential buildings within the Project Site.

B. Master Developer, (i) on December 18, 2019, assigned certain rights, title, and interest in and to the DDA with respect to Phase 1 to Mission Rock Horizontal Sub (Phase 1), L.L.C., a Delaware limited liability company (“**Phase 1 Horizontal Developer**”), all of which were assumed by Phase 1 Horizontal Developer, and (ii) effective December 19, 2019, subleased Phase 1 of the premises under the Master Lease to the Phase 1 Horizontal Developer.

C. MRU is a non-stock corporation formed under the laws of the State of Delaware, is qualified to transact business in the State of California and was established to provide wastewater treatment and non-potable water delivery services to the Mission Rock Development.

D. Phase 1 Horizontal Developer has engaged MRU to finance, design and construct a centralized wastewater treatment and recycled, non-potable water delivery system at the Project Site (the “**Facility**”), Service Piping (as defined below) and appurtenant infrastructure for the Facility. Upon completion, MRU intends to operate and maintain the Facility in accordance with the terms and conditions set forth herein.

E. It is a key policy goal of the Port to advance the sustainability goals set forth in the Sustainability Strategy and Article 12C of the San Francisco Health Code and to use non-potable water for use in, among other things, park surface irrigation purposes and for surface irrigation, water closets and urinals in connection with public open space maintenance. As used herein, the term “Recycled Water” shall mean “Non-potable Water” as defined in Article 12C of the San Francisco Health Code.

F. MRU has entered into an agreement (the “**Master Association RWSA**”) with Mission Rock Owners Association, Inc., a California mutual benefit corporation (the “**Master Association**”) for the Master Association to obtain water for the proposed development of commercial and residential buildings that are expected within the Mission Rock Development.

G. In order for MRU to furnish water to Port, the Parties now wish to enter into an agreement for the delivery of, and payment for, such services.

H. The Office of Contract Administration (“OCA”) provided a sole source determination on _____, 2022.

I. NOW, THEREFORE, in consideration of the mutual covenants, representations and warranties herein contained, the Parties, intending to be legally bound, hereby agree as follows:

AGREEMENT:

1. PREMISES; ASSIGNMENT AND RELEASE; TERM.

A. This Agreement shall initially apply to the area [described/depicted] on *Schedule 1* (the “**Initial Premises**”). As the Port accepts other areas within the Mission Rock Development or assumes maintenance responsibilities therefor, such areas (the “**Expansion Areas**”) shall become subject to this Agreement and the Parties shall amend this Agreement to update *Schedule 1* to include such applicable Expansion Areas. The Initial Premises as such area may be expanded from time to time by the Expansion Areas shall be referred to herein as the “**Premises.**”

B. The Parties acknowledge that the Port intends to enter into a lease with Mission Rock Commons LLC (together with any other entity that is an affiliate of the Developer, Tishman Speyer or the San Francisco Giants, and which either (i) has access to assessments or dues collected by the Master Association, or (ii) if such affiliate does not have access to such assessments or dues, is approved by MRU, such approval not to be withheld so long as such affiliate has adequate financial resources to satisfy Port’s obligations under this Agreement, each a “**Park MRC Tenant**”), for certain portions of the Premises commonly known as China Basin Park (such lease, or any other lease or management agreement for the entirety of China Basin Park, a “**Park Lease**”). Port has the right to assign all of Port’s obligations under this Agreement to (i) the Park MRC Tenant concurrently with the execution of the Park Lease, or (ii) if Port enters into a Park Lease with another entity, such other entity (“**Other Park Tenant**”). Port’s assignment of its obligations under this Agreement may be set forth in the Park Lease and MRU consents to such assignment without the need for any additional documents.

C. For so long as the Park Lease with the Park MRC Tenant is in effect and the Park MRC Tenant has assumed all of the Port’s responsibilities under this Agreement, the Port shall be released from all obligations hereunder. If a Park MRC Tenant is no longer the tenant under the Park Lease, then for so long as the Park Lease with the Other Park Tenant is in effect, and the Other Park Tenant has assumed and is performing all of the Port’s responsibilities under this Agreement, the Port shall be released from all obligations hereunder. MRU will concurrently send Port notices of any default of this Agreement by the Park MRC Tenant and the Other Park Tenant, as applicable. Upon termination of a Park Lease with a Park MRC Tenant, the Port’s liability for all obligations hereunder arising from and after such termination shall be automatically reinstated until Port enters into another Park Lease with another entity, in which event, so long as all of Port’s obligations are assigned to such tenant or manager (i) that is a Park MRC Tenant, Port will again be released of all its obligations hereunder during the period such agreement is effective, or (ii) that is not a Park MRC Tenant, for so long as such entity is also performing the obligations under this Agreement, Port will again be released of all its obligations hereunder during the period such agreement is effective. Upon termination of a Park Lease with

an Other Park Tenant, the Port's liability for all obligations hereunder during the term of, and from and after the termination of, such Park Lease shall be automatically reinstated until Port enters into another Park Lease with another entity, in which event, so long as all of Port's obligations are assigned to such tenant or manager (i) that is a Park MRC Tenant, Port will again be released of all its obligations hereunder during the period such agreement is effective, or (ii) that is not a Park MRC Tenant, for so long as such entity is also performing the obligations under this Agreement, Port will again be released of all its obligations hereunder during the period such agreement is effective.

D. This Agreement is effective on the Effective Date and will remain in effect until the thirtieth (30th) anniversary of the Effective Date (the "**Initial Term**") unless earlier terminated pursuant to the terms of this Agreement. The "**Effective Date**" means the latest to occur of (i) the First Service Date, (ii) the date this Agreement is fully executed by the Parties, and (iii) the date the Port has accepted the Initial Premises. The "**First Service Date**" means the date on which the Facility achieves commercial operation and is capable of delivering Recycled Water Services at the Delivery Points. Subject to earlier termination in accordance with the provisions of this Agreement, so long as the Guaranteed Maximum Costs have not been exceeded, upon expiration of the Initial Term, the term of this Agreement will be renewed at Port's option in its sole discretion, subject to MRU's consent. Port will deliver its written notice of renewal at least thirty days prior to the then expiration date and also include in such notice, the term of the renewal period. MRU may elect to disapprove any Port exercise of its option to renew, in which event, this Agreement will terminate at the end of the then applicable term of this Agreement. If at any time, the Master Association terminates the Master Association RWSA, MRU shall promptly notify Port of the same in writing and, irrespective of whether MRU has provided Port with notice of the Master Association terminating the Master Association RWSA, unless the Master Association purchases the Facility upon such termination and assumes all of MRU's obligations under this Agreement, this Agreement will terminate on the effective termination date of the Master Association RWSA unless otherwise provided by Port in writing. If the Master Association purchases the Facility and assumes all of MRU's obligations under this Agreement, then Port will have no right to terminate this Agreement based solely on the termination of the Master Association RWSA.

E. Without limiting (x) the Port's termination right if the Master Association RWSA is terminated (except in connection with the Master Association's election to purchase the Facility and assumption of all of MRU's obligations under this Agreement) or (y) a Party's rights to terminate this Agreement following an Event of Default pursuant to Section 11.2, this Agreement may be terminated (i) by mutual written consent of each Party, or (ii) by MRU at any time prior to the First Service Date. A Party terminating this Agreement pursuant to this Section 1.D shall give written notice of that termination to the other Party. If this Agreement is terminated by a Party pursuant to this Section 1.E, each Party shall be released from all obligations hereunder, except with respect to the obligations of the Parties which expressly survive the termination of this Agreement.

2. PURCHASE PRICE; FINANCIAL MATTERS; GUARANTEED MAXIMUM COSTS; PORT ANNUAL CAP; PAYMENT; BOOKS AND RECORDS.

A. The cost of water shall be determined as set forth in *Exhibit A* ("**Water Costs**"), which is attached to and incorporated by reference in this Agreement, and defines the purchase price from the Effective Date through the end of the contract term.

B. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of Port's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to Port at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. Port has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Port budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. MRU's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. For the avoidance of doubt, MRU shall have no obligation to deliver services to the Port under this Agreement if the Port does not have funds available to pay for such services in accordance with the terms of this Agreement for any reason. **THIS SECTION 2.B CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

C. Guaranteed Maximum Costs; Port Annual Cap. The Port's payment obligation to MRU cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification nor can it exceed in any given calendar year, the Port Annual Cap described in *Exhibit A*. Absent an authorized Emergency per the City Charter or applicable Code, no City or Port representative is authorized to offer or promise, nor is the City or Port required to honor, any offered or promised payments to MRU under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount. Additionally, in no event will the amount certified by the City's Controller exceed \$44,656,545 for the total term ("**Guaranteed Maximum Costs**").

D. Subject to the provisions of this Section 2.D and Sections 2.E and 2.F, Port will be billed monthly (the "**Billing Period**"), and payment will be due and payable within thirty (30) days of the date of the invoice. MRU shall serve as the third-party billing agent and customer of record for any applicable SFPUC water and/or sewer charges. If the Park Lease with the Park MRC Tenant is not effective as of the Effective Date, with respect to Port only (as opposed to any assignee or transferee of Port's rights under this Agreement), Port has no obligation to pay any amounts owed under this Agreement unless Port timely receives from the Master Developer, an amount equal to all the Contingent Services Special Taxes that would be due and payable through December of the fiscal year immediately following the Effective Date (the "**Transition Fee**"); provided that the Transition Fee may be paid by the Master Developer as and to the extent amounts are due from the Port under this Agreement. If Port does not receive in full the Transition Fee, if applicable, then Port will pay amounts owed under this Agreement in accordance with Sections 2.E and 2.F only after the Contingent Services Special Taxes due and payable have been paid.

E. Without limiting Section 2.D, Port's obligation to pay MRU under this Agreement will be further reduced by and to the extent each holder of a "**Leasehold Interest**" in a "**Taxable Parcel**" fails to timely pay in full the applicable Contingent Services Special Taxes that are then due and payable as follows: the Port's obligation to pay MRU under this Agreement shall be reduced by the same percentage as the percentage of Contingent Services Special Taxes that have not been timely paid. For example, if ten percent (10%) of the Contingent Services Special Taxes have not been timely paid for a specific period of time, the Port's obligation to pay MRU under this Agreement for that period of time shall be reduced by ten percent (10%).

F. The Port will not be liable for any late fees or any other charges or assessments of any type that may have been charged or accrued as a result of the failure of holder of a Leasehold Interest in a Taxable Parcel to pay such levied amounts when due and payable.

“**Mission Rock CFD**” means the City and County of San Francisco Special Tax District No. 2020-1 (Mission Rock Facilities and Services). “**Contingent Services Special Taxes**,” “**Leasehold Interest**,” “**Taxable Parcel**,” and “**Administrator**” are each defined in the RMA. “**RMA**” means that certain Rate and Method of Apportionment attached as Exhibit B to Resolution 160-20, the resolution of formation of the Mission Rock CFD, adopted by the Board of Supervisors on April 14, 2020, file no. 200120.

MRU will bill the Park MRC Tenant or Other Park Tenant, as applicable, for all payments due under this Agreement during the effective period of the Park Lease. MRU will bill Port for amounts due under this Agreement when there is no Park Lease. Except as set forth in the immediately following paragraph for the Port, any amounts owing pursuant to the terms of this Agreement and not paid when due shall incur a penalty equal to the amount of the five percent (5%) of the amount then due, plus all of said amounts then bearing interest at a percentage rate of one and one-half percent (1.5%) percent per month or the highest rate permitted by law, whichever is less, until all amounts due hereunder are paid in full. Payment of such interest is not the non-defaulting party’s sole remedy for the failure of the defaulting party to make timely payments under this Agreement.

To account for additional time needed for payment during the City’s fiscal year transition, with respect to Port only, Port will not be subject to any penalties for late payment of any amounts due in July of each year unless such amount is not paid in full by August 31 of that year. Subject to the immediately foregoing sentence, if MRU incurs any late fees, interest or penalty due to Port’s failure to pay when due amounts owed by Port under this Agreement, then Port will be subject to a penalty equal to the lesser of (i) Port’s share of such late fee, interest or penalty incurred by MRU or (ii) five percent (5%) of the then outstanding amount due by Port. If Port’s failure to pay continues for an additional ninety (90) days or beyond, then Port will be subject to an additional penalty equal to the lesser of (x) Port’s share of such late fee, interest or penalty incurred by MRU or (y) five percent (5%) of the total outstanding amount due by Port on each such subsequent 90th day until all amounts due by Port under this Agreement are paid in full.

Port will not be liable for any amount due under this Agreement that accrues while the Park Lease with the Park MRC Tenant is in effect, including but not limited to any NPWCC charges, NPWFC charges, late fees, penalty or interest, or any amounts owed by the Park MRC Tenant that remain outstanding after termination of the Park Lease.

G. The compensation paid by Port to MRU pursuant to this Section 2 does not include reimbursement for, and Port shall be solely liable for and shall pay, cause to be paid, or reimburse MRU promptly upon demand for the Port’s pro rata share if MRU is required to pay any and all taxes (including sales taxes, as applicable) other than transfer taxes and income taxes relating to or arising out of the delivery, sale or consumption of the water for non-potable uses to and by Port in accordance of this Agreement. As used herein, “**Wastewater**” means water and waste generated from Port’s lavatories, water closets, urinals, and similar fixtures located on the Premises that is delivered to the Facility at the Wastewater Collection Point. As between Port and MRU, Port shall also be liable for any net income taxes imposed upon Port with respect to the transactions contemplated hereunder. MRU shall be liable for and shall pay, cause to be paid, or reimburse Port if Port is required to pay, any and all taxes imposed on or with respect to the Facility or any other tangible property owned by MRU. As between MRU and Port, MRU shall also be liable for any transfer taxes or net income taxes imposed upon MRU with respect to the transactions contemplated hereunder. MRU shall indemnify, defend and hold harmless Port and

its directors, officers, employees, representatives or agents (“**Customer Parties**”) from and with respect to liability for any such taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from any taxes.

H. Audit and Inspection of Records. Upon Port’s request, MRU agrees to make available to Port, during regular business hours, existing books and accounting records relating to its services under this Agreement. MRU will permit Port to examine and make excerpts and transcripts from such books and records, and to the extent required by law, to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. MRU shall maintain such records for a period of not less than three years after such records are created. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon Port by this Section. MRU shall include the same audit and inspection rights and record retention requirements in all subcontracts.

I. Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City and Port for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City or Port if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City or Port a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City or Port ; (c) conspires to defraud the City or Port by getting a false claim allowed or paid by the City or Port; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City or Port; or (e) is a beneficiary of an inadvertent submission of a false claim to the City or Port, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City or Port within a reasonable time after discovery of the false claim.

3. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AND ORDERS; COMPLIANCE WITH REQUIREMENTS OF MRU.

A. MRU must comply with all provisions of Article 12C of the San Francisco Health Code and accompanying regulations adopted by the San Francisco Department of Public Health, any applicable permit conditions and Legal Requirements. Port agrees that it will use water received from MRU consistent with San Francisco Health Code Article 12 (“**Permitted Non-Potable Water Uses**”). MRU shall engage employees or contractors which are qualified to perform the Recycled Water Services as described in this Agreement. “**Legal Requirements**” means (i) with respect to any governmental authority, any applicable federal, state or local constitutional provision, law, code, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority, (ii) the terms and conditions of any Governmental Approvals and (iii) the Facility Land Agreements, Declaration, DDA, Master Lease, Member Ground Leases, vertical development agreements entered into by the Members with the Port and any other

agreements required or contemplated by such agreements. **“Governmental Approvals”** means any necessary and required federal, state, or local permits, authorizations, approvals, implementation plans, and consents required for the Facility and the provision of the Recycled Water Services under this Agreement. **“Facility Land Agreement”** or **“Facility Land Agreements”** means each agreement or collectively, the agreements in effect from time to time granting subleaseholds, easements, licenses, access and/or similar rights to the land that is necessary to construct, operate and maintain the Facility, Service Piping, and appurtenant infrastructure, to be executed by and between MRU and the applicable Members, Master Developer and/or the Port in a form and with content that is mutually acceptable to such parties, including without limitation the MRU Lease and the Master Encroachment Permit. **“Declaration”** means that certain Mission Rock Master Declaration of Restrictions dated June 25, 2020 and recorded in the real property records of the County of San Francisco on June 25, 2020 as Instrument No. 2020-K944344, as may be amended, restated, modified or supplemented and in effect from time to time. **“Member Ground Lease”** means the lease between the Port, as landlord, and the applicable Member, as tenant, for a particular Building Lot within the Mission Rock Development (which is referred to in the DDA as a **“Parcel Lease”**), as may be amended, restated, modified or supplemented and in effect from time to time. **“Members”** means the Owners (as defined in the Declaration) of the Buildings Lots (as defined in the Declaration) within the Mission Rock Development. **“MRU Lease”** means the Lease entered into by MRU and Mission Rock Parcel B Owner, L.L.C., an affiliate of Master Developer and Phase 1 Horizontal Developer, for space within the Building Lot shown as Lot 2 on the Phase 1 Map to install and operate the Plant, as such lease, as executed and as it may be amended, restated, modified, or supplemented and in effect from time to time. **“Plant”** means a centralized wastewater treatment and recycled, non-potable water delivery system on the Building Lot shown as Lot 2 on the Phase 1 Map. **“Phase 1 Map”** means Final Map 9443 filed for record on June 12, 2020 in Book 1 of Final Maps, Pages 28-38 inclusive, Official Records of the City and County of San Francisco.

B. Water purchased by Port shall be for the use of (i) Port, (ii) the Park MRC Tenant or Other Park Tenant, as applicable, or (iii) a third party selected by Port so long as the Port’s transfer of water to such third party does not trigger any legal or regulatory violations and the total water purchased by Port for all such parties does not exceed the Port’s Contract Capacity (as defined in Exhibit A).

C. Prior to the date the Port has accepted the Initial Premises, the Master Developer, Phase I Horizontal Developer or the various vertical developers, as applicable, have control of the Premises. Accordingly, Port does not have the right to install any equipment within the Premises without the prior written consent of the Master Developer. From and after the date the Port has accepted the Initial Premises, Port shall not install equipment within the Premises that will materially and adversely impact the Facility without the prior written consent of MRU, which consent will not be unreasonably withheld. In no event will installation of equipment within the Premises by the Master Developer, its affiliates or any vertical developer within the Premises be deemed or considered a Port installation of equipment.

D. Port acknowledges that MRU’s production of water for non-potable uses could be subject to changes in federal law, state law, the San Francisco Municipal Code, and all associated regulations and requirements, and that these changes may conflict with the terms of this Agreement. In the event of a conflict between this Agreement and applicable Legal

Requirements, Port agrees to consider reasonable modification of this Agreement to comply with applicable Legal Requirements.

E. Port shall not directly, or through its contractors performing work on behalf of the Port (expressly excluding work performed by or on behalf of Master Developer, any phase horizontal developer, any vertical developer, or any of their respective affiliates, agents, and subtenants), use equipment in such a manner as to adversely affect the Facility or non-potable water services to others. Port shall use commercially reasonable efforts to prevent the delivery of Wastewater to the Wastewater Collection Point that contains Abnormal Substances. Commercially reasonable efforts to prevent the delivery of Abnormal Substances to the Wastewater Collection Point may include posting of signs prohibiting dropping foreign substances into toilets located on the Premises. As used herein, “**Abnormal Substances**” means substances or materials (including viscous, toxic or hazardous substances) that (i) were not reasonably anticipated by MRU as being in the Wastewater, (ii) are present in the Wastewater in a type, concentration or loading that was not reasonably anticipated by MRU; or (iii) exceed the design capacity of the Facility to adequately treat when operated in accordance with Article 12C of the San Francisco Health Code.

F. Once the Facility is operational (including MRU obtaining all regulatory approvals necessary to commence operations) and the toilets within the Premises are open for use by the general public, MRU will extract at the Wastewater Collection Point, Wastewater from toilets within the Premises on a daily basis.

4. DELIVERY AND AVAILABILITY OF WATER FOR NON-POTABLE USES; INTERRUPTION OF SERVICE.

A. Subject to Force Majeure, during the term of this Agreement, MRU (i) will operate and maintain the Facility in compliance with the Project Scope, Good Operating Practice and all Legal Requirements, and (ii) shall use commercially reasonable efforts to deliver Recycled Water to Port, not to exceed Port’s Contract Capacity. “**Good Operating Practice**” shall mean the practices, methods, and acts engaged in or approved by a significant portion of the recycled water services industry during the relevant time period, or the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, and the requirements of governmental authorities having jurisdiction; such term is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods or acts, including prudent industry practices. At full completion of the Mission Rock project, MRU will deliver up to 8,800 gallons of water for non-potable uses per day to Port. Before full completion, MRU will deliver water for non-potable uses up to the amounts set forth for each particular phase of the Mission Rock project as set forth on *Exhibit A*. Port agrees that, during the term of this Agreement, it shall purchase water for non-potable uses for the Premises from MRU, except to the extent that MRU does not supply such water in violation of this Agreement. If the Port’s supply of water generated from the treatment of wastewater by the Facility (“**Recycled Water**” or “**non-potable water**”) is interrupted, then during the time such water is unavailable, MRU will provide Port with San Francisco Public Utility Commission (“**SFPUC**”) water to the Premises at the same rate set forth on Exhibit A, but in no event will the cost of SFPUC water and Recycled Water purchased by Port exceed the amount certified by the Controller for such applicable period. If Port’s supply of both Recycled Water and SFPUC water is interrupted, then MRU will promptly notify Port of such interruption. The notice will include the start date of such interruption, the meter reading when such the interruption started, and the date delivery of

Recycled Water and/or SFPUC water is available, or if unknown, the estimated date of when it would become available. MRU will send another notice to Port when delivery of Recycled Water and/or SFPUC water becomes available, including the date and meter reading when it became available.

B. Port will accept delivery of water for non-potable uses at one or more “**Delivery Points**” (as defined below), each as engineered, designed, and constructed in accordance with the design and equipment parameters set forth in *Exhibit B* (“**Project Scope**”). The water for non-potable uses must be delivered to the Delivery Points by MRU. “**Delivery Point(s)**” means, as the context requires, the Delivery Point or the Wastewater Collection Point. “**Non-Potable Water Delivery Point**” means the physical points at which non-potable water is delivered, made available, provided and measured (as applicable) pursuant to the provisions of this Agreement, as depicted on *Exhibit C* (as may be updated by the parties from time to time). “**Wastewater Collection Point**” means the physical points at which Wastewater is collected and measured (as applicable) pursuant to the provisions of this Agreement, as depicted on *Exhibit D* (as may be updated by the parties from time to time).

C. Both parties acknowledge that MRU’s supply and delivery of water for non-potable uses and Port’s ability to accept delivery of water for non-potable uses may occasionally be interrupted or curtailed due to “**Force Majeure**” (as defined below). Each party will not be liable to the other for damages, including any consequential damages, arising out of interruption or curtailment of delivery or acceptance of service for these reasons; provided, however, the foregoing limitation will only apply to MRU to the extent MRU does not use commercially reasonable efforts to provide SFPUC water to Port during such period of Force Majeure that interrupts delivery of Recycled Water. Insofar as feasible, the party whose performance hereunder is affected by such condition must give the other party at least 72 hours advance notice of a temporary discontinuance or reduction in its delivery (in the case of MRU) or in its acceptance (in the case of Port) of water for non-potable uses, except in the case of emergency, in which case notice must be delivered as promptly as reasonably practicable. MRU shall undertake industry-standard, commercially reasonable efforts to perform scheduled maintenance that may include interruptions to Port’s supply of water for non-potable uses. MRU shall not be required to sell or make available to Port any non-potable water during such scheduled maintenance outages, provided, however, MRU will provide Port SFPUC water during such maintenance outages at the same rates set forth on Exhibit A. Upon notice of reduction of delivery of water in accordance with this subsection, MRU agrees that any decreases in delivery of water for non-potable uses will impact Port and any other customer in a manner proportionate to each customer’s historical water usage for non-potable uses over the 24 months immediately prior to the notice of reduction.

D. Notwithstanding any other provision of this Agreement, but subject to Article 11 of this Agreement, without increasing the Port’s Contract Capacity, MRU will continue to provide water to Port in any given calendar year without any charge if the Port Annual Cap is met in such calendar year.

5. SERVICE INSTALLATION.

5.1. Responsibility for Infrastructure Maintenance. MRU shall be solely responsible for maintenance, and, as necessary, replacement and renewal of equipment and other materials owned by MRU, including all MRU-owned Service Piping. Port shall be solely responsible for

the maintenance and, as necessary, replacement and renewal of all of the equipment and other materials owned by Port after acceptance by the Port Commission of such equipment, including all Port-owned Service Piping. As used herein, “**Service Piping**” means the piping used to collect Wastewater and deliver water for non-potable uses that connects the Facility to (a) the inlet flange at the Wastewater Collection Point to receive Wastewater, and (b) the outlet flange at the Delivery Points to deliver non-potable water.

5.2. No Real Property Interested Granted to MRU Under this Agreement. This Agreement does not grant MRU any real property interest in the Premises or right to use the Premises for the installation, operation or maintenance of the Service Piping. MRU will need to enter into a separate Port form license or other form of agreement that grants MRU rights to install, operate and maintain its Service Piping, which license or agreement will be effective no earlier than Port’s acceptance of the Premises and which Port staff intends to seek Port Commission approval (which approval may be granted or denied at the Port Commission’s sole discretion) for a no fee license agreement (the “**Service Piping License**”). The Service Piping License will include a provision that will require MRU to remove or relocate without expense to Port or City any Service Piping covered by the Service Piping License, if and when such removal or relocation is made necessary by any lawful change of grade, alignment or width of any street or right of way, or by any work to be performed under the governmental authority of Port or the City and upon written notice by Port or City as applicable; provided, however, that MRU shall not be responsible for any costs or expenses which are approved by the Port Commission as Horizontal Development Costs through a Phase budget approval or other agreement authorized by the Port Commission.

5.3. Port Infrastructure. MRU’s interconnection requirements, including maximum pressure, flow, temperature, water quality and other data related to the delivery of water for non-potable uses, are set forth in *Exhibit G*. Provided Master Developer and Phase 1 Horizontal Developer have built all equipment within the Premises meeting MRU’s requirements at the time Port accepts the horizontal improvements in all of the Premises, from and after Port acceptance of the horizontal improvements within all of the Premises, Port shall be responsible for ensuring that the Port’s piping and other equipment and materials conform to such interconnection requirements. MRU will not change the interconnection requirements without first providing Port and other customers notice of its intent to change such requirements and a reasonable opportunity for Port and the other customers to comment on the proposed changes. In no event will Port be required to replace or change any of Port’s then existing piping or other equipment and materials due solely to MRU’s adoption of any change to the interconnection requirements.

5.4. Location of Service Piping and Meter. The location of the Service Piping and meters are set forth in *Exhibits C, D, E and F*. The Port and MRU shall reasonably cooperate to update such Exhibits as necessary from time to time. It is Port’s responsibility to provide and maintain unobstructed access to the meters for MRU.

5.5. Safety and Operability Devices; Access and Notice Obligations. Except in cases of emergency, MRU shall provide Port with reasonable notice of required access through the Premises so that MRU may access the MRU side of the Wastewater Collection Point and Delivery Points for the maintenance and replacement of MRU-owned cutoff valves and other operational equipment, and Port shall provide such access, subject to satisfaction of all of the following conditions: (i) the notice will include the period of required access; (ii) MRU will use

commercially reasonable efforts to minimize any interference to Port's tenants and other users of the Premises; (iii) MRU will use commercially reasonable efforts to minimize the area within the Premises that is blocked off to the public during of the period of maintenance and replacement; (iv) MRU promptly repairs any portion the Premises damaged by MRU's work to the condition it was in immediately prior to MRU's work.

6. RISK OF LOSS.

Port will be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of non-potable water at and after the metered Delivery Point(s). MRU will be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of non-potable water prior to the metered Delivery Point(s). Risk of loss and liability related to non-potable water shall transfer from MRU to Port at the Non-Potable Water Delivery Points. Port shall be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of Wastewater prior to and at the Wastewater Collection Point. For the purposes of this Agreement only, MRU shall be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of Wastewater at and after the Wastewater Collection Point. Risk of loss and liability related to Wastewater shall transfer from Port to MRU at the Wastewater Collection Point.

7. MEASUREMENT OF DELIVERED NON-POTABLE WATER.

7.1. All non-potable water delivered pursuant to this Agreement will be measured by the meters at the Delivery Points. MRU will own, operate, inspect, maintain, repair and replace the measuring equipment so they are in good working condition and able to accurately measure the quantities of delivered water as determined by applicable industry standards. Subject only to the following sub-Sections of this Section 7, the meters shall be used to determine conclusively the amount of non-potable water delivered by MRU at the Delivery Points.

7.2. Any meter used for billing purposes installed pursuant to this Agreement shall be tested regularly by MRU in accordance with the manufacturer's recommendations and Article 12C of the San Francisco Health Code. In addition, at MRU's expense, MRU will test or, if requested, will provide an independent, certified calibration and operational check of any such meter at commercially reasonable intervals. If a meter is found to violate tolerances set by equipment manufacturers' specifications or to be otherwise defective, it shall be promptly repaired or replaced. Port shall be afforded an opportunity to have its representative present during all testing.

7.3. If any test of a meter discloses inaccuracy in excess of the equipment manufacturer's specifications, payments shall be adjusted for: (a) the actual period during which inaccurate measurements were made, if the period can be determined; or (b) if the period of inaccurate measurements cannot be determined, then the period from the date of the latest test until the elapsed period in the month during which the test was made.

7.4. Should a meter at any time fail to register or should the registration thereof be so erratic as to be unreliable, the charges for water shall be based on the Port's historical water usage for non-potable uses over the 24 months immediately prior to such failure.

8. NONTRANSFERABLE; PROJECT FINANCING.

A. Except for an assignment in accordance with Section 1.B, Port's rights to non-potable water deliveries under this Agreement are not transferable or assignable, without the prior written approval of MRU, which approval may be withheld in MRU's sole and absolute discretion.

B. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by MRU, or, where MRU is a joint venture, a joint venture partner (collectively referred to as an "Assignment") unless first approved by Port by written instrument executed and approved in the same manner as this Agreement, except that: (i) this Agreement may be collaterally assigned in whole by MRU to any entity or entities providing debt financing or refinancing to MRU or any affiliate of MRU under the Financing Documents (as defined below) in connection with the construction, ownership, operation, maintenance, financing or capital improvement of the Facility (a "Project Lender") and such Project Lender may exercise its remedies with respect to such collateral assignment (including without limitation directly assuming this Agreement) all without Port's consent; (ii) this Agreement may be assigned without Port's consent or approval to the Master Association if the Master Association acquires the Facility so long as the Master Association complies with all of MRU's obligations under this Agreement and the Master Association has, or engages a party that has, the industry competence and experience, and all necessary Governmental Approvals, to perform the assignor's obligations under this Agreement; (iii) this Agreement may be assigned without such consent to a successor (by merger, consolidation, or acquisition) of MRU, but such assignment shall not relieve the assigning Party of any of its obligations under this Agreement and the successor must have, or engage a party that has, the industry competence and experience, and all necessary Governmental Approvals, to perform MRU's obligations under this Agreement; and (iv) this Agreement may be assigned to an affiliate of MRU with the approval of the Port, which approval shall not be unreasonably withheld; provided, however, such consent of Port shall not be required if the assignment is to an affiliate of MRU in its capacity as a Project Lender with respect to any debt financing or refinancing described in clause (i) above and the terms of the Financing Documents are not worse for MRU than terms reflective of an arms-length transaction and are financially beneficial to the customers of Mission Rock as a whole. The Port's approval of any Assignment requiring Port's approval is subject to the MRU demonstrating to Port's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of MRU's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with Port or City; and (c) subject to the jurisdiction of the courts of the State of California; provided that Port's approval shall not be withheld if Port would not be in violation of City laws by consenting to the Assignment and the proposed assignee (1) is similarly creditworthy as the assignor, and (2) has the industry competence and experience, and all necessary Governmental Approvals, to perform the assignor's obligations under this Agreement. A change of ownership or control of MRU or a sale or transfer of substantially all of the assets of MRU shall be deemed an Assignment for purposes of this Agreement; provided that changes in the members of the board of directors of MRU shall not constitute a change of control of MRU. MRU must immediately notify Port about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

C. In connection with any collateral assignment by MRU of this Agreement to a Project Lender as set forth in Section 8.B, Port agrees to execute and deliver a Consent and Agreement to such assignment in the form commercially reasonably requested by a Project Lender so long as Port, in consultation with the City Attorney's Office, determines that the Consent and Agreement does not materially increase Port's liabilities or materially decrease Port's benefits under this Agreement; provided, however, that such Consent and Agreement, or any substitute Consent and Agreement reasonably requested by a Project Lender, shall not result in, or purport to constitute, an amendment or modification of this Agreement. Port further agrees to furnish the Project Lender with such other documents as may reasonably be requested by the Project Lender, including evidence of Port's authority to execute and deliver this Agreement and the Consent and Agreement. In no event will Port be obligated to provide an opinion of counsel. As used herein, "**Financing Document**" means any loan or credit agreement and all related collateral security documentation, if any, now existing or hereafter executed, relating to (a) any indebtedness of MRU, or (b) any indebtedness of any member or affiliate of MRU, secured by the assets of MRU, the membership interests in MRU, or by which the assets of MRU may be encumbered, in all events all of the proceeds of which (less standard lender's and financing costs) are used to construct, own, operate, maintain or finance the Facility, perform necessary capital improvements to the Facility or refinance such approved financing. MRU or any member or affiliate of MRU that uses the assets of MRU or membership interest of MRU as security for any loan or credit agreement (the cost of which will be passed along to the customers of the Facility) must use commercially reasonable efforts to obtain cost effective financing that is financially beneficial to the customers of the Facility as whole.

9. INSURANCE; INDEMNIFICATION; LIABILITY.

9.1.General Requirements. All insurance required under this Agreement:

(a) As to property and boiler and machinery insurance, shall name Port, City, and MRU as named insureds and Port as loss payee as its interest may appear.

(b) As to liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." MRU shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.

(c) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(d) Not more often than every year and upon not less than sixty (60) days prior written notice, as requested by either Party, Port and MRU may evaluate the insurance limits or to provide other coverage and/or different coverage amounts as may be required by Law or if in the reasonable judgement of the City's Risk Manager it would be commercially reasonable to do so. In any such event, MRU shall promptly deliver to Port a certificate evidencing such new insurance limits and meeting all other requirements under the WPA with respect thereto.

(e) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(f) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Section 9.2;

(g) Shall be subject to the approval of Port, which approval shall be limited to whether or not such insurance meets the terms of this Agreement and shall not be unreasonably withheld, conditioned or delayed; and

(h) Except for professional liability insurance which shall be maintained in accordance with Section 9.2, if any of the insurance required hereunder is provided under a claims-made form of policy, Port or MRU, as applicable, shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Agreement, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Agreement.

(i) Shall for Property Related Insurance only, provide that all losses payable under all such policies shall be payable notwithstanding any act or negligence of Port.

9.2. Required Insurance Coverage. MRU, at its sole cost and expense, will maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) Commercial General Liability Insurance. Comprehensive or "Commercial General Liability" insurance, with limits not less than Twenty-Five Dollars (\$10,000,000.00) each occurrence combined single limit for bodily injury (including death) and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which MRU is conducting any activity on or alteration or improvement to the Premises with risk of explosion, collapse, or underground hazards; personal and advertising liability, and the products-completed operations. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Insurance. MRU will maintain policies of business automobile liability insurance in accordance with applicable laws covering all owned, non-owned, or hired motor vehicles to be used in connection with MRU's use and occupancy of, and activity at, the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than the limits required for commercial general liability insurance for each occurrence combined single limit.

(c) Environmental/Pollution Liability Insurance. During the course of any Hazardous Materials Remediation activities, MRU will maintain, or require by written contract that its remediation contractor or remediation consultant will maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Ten Million Dollars (\$10,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of Port (such approval not to be unreasonably withheld, conditioned or delayed).

(d) Construction Activities. At all times during any period of MRU's construction of improvements or alterations,

(i) MRU will cause MRU's Agents (including MRU's contractor) to carry such insurance coverage and limits as will be reasonably approved by Port and the City's Risk Manager, taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, MRU will carry "Builder's All Risk" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the

completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent improvements, against "all risk" and "special form" hazards.

(iii) MRU will require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with MRU for any improvements or any alterations to maintain professional liability (errors or omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000.00) each claim and Ten Million Dollars (\$10,000,000) in the aggregate, with respect to all professional services provided to MRU therefor.

(e) Workers' Compensation; Employer's Liability. Worker's Compensation Insurance in statutory amounts in accordance with applicable laws with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(f) Personal Property Insurance. MRU, at its sole cost and expense, will procure and maintain on all of MRU's Property and alterations, in, on, or about the Premises, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at MRU's sole discretion, for the replacement of MRU's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to MRU by Port pursuant to this Agreement in such amounts as Port deems reasonably appropriate and MRU will have no interest in the proceeds of such personal property insurance. Port will have no responsibility or obligation to maintain insurance or replace MRU's Property, alterations, or any improvements regardless of cause of loss.

(g) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require MRU to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Premises with respect to risks comparable to those associated with the use of the Premises.

9.3. Certificates of Insurance; Right of to Maintain Insurance.

(a) MRU shall furnish Port certificates with respect to the policies required under Section 9.2, together with (if Port so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. MRU shall provide Port with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide Port with notice of reduction in coverage limits within thirty (30) days of MRU's knowledge of such event. If at any time MRU fails to maintain the insurance required pursuant to Section 9.2, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to MRU and opportunity to cure, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) days following demand, MRU shall reimburse Port for all reasonable premiums so paid by Port, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

(b) Port shall furnish MRU certificates with respect to the policies required under Section 9.2, together with (if MRU so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Port shall provide MRU with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide MRU with notice of reduction in coverage limits within thirty (30) days of Port's knowledge of such event.

(c) If at any time Port fails to maintain the insurance required pursuant to Section 9.2, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to Port and opportunity to cure, MRU may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to MRU. Within thirty (30) days following demand, Port shall reimburse MRU for all reasonable premiums so paid by MRU, together with all reasonable costs and expenses in connection therewith and interest thereon.

9.4. Insurance of Others. MRU shall require by written contract that general liability insurance policies that MRU requires to be maintained by Subtenants, Operators, contractors, subcontractors, or others in connection with their use or occupancy of, or their activities on, the Premises, include MRU and Port (using the wording described in Section 9.1 as additional insureds).

9.5. Indemnification by MRU. MRU shall indemnify, defend and hold harmless Port from and against (i) any liability arising out of or in any way relating to MRU's possession and control of non-potable water prior to the Delivery Point therefor, and for Wastewater after the Wastewater Collection Point, and (ii) any damage, liability or cost to the extent caused by the negligent acts, errors, or omissions of MRU or caused by the breach of any of the representations or warranties of MRU herein.

9.6. Aggregate Yearly Limit of Liability. Notwithstanding any other provision in this Agreement to the contrary, and without limiting MRU's obligations under Sections 9.1—9.5, and except to the extent arising under Section 9.5, the Parties agree that MRU's aggregate cumulative liability to Port in any calendar year arising out of or relating to this Agreement from any and all causes, shall not exceed an amount equal to the cumulative Water Costs calculated in accordance with Exhibit A for such calendar year (collectively, the "**Yearly Aggregate Liability Limit**").

9.7. Intentionally Omitted.

9.8. Waiver of Consequential Damages. Except with respect to payments and amounts provided for in this Agreement, in no event shall either MRU, the Port, or their respective officers, directors, partners, shareholders, affiliates, agents, employees, successors, assigns, suppliers or contractors be liable to the other Party hereunder or to its officers, directors, partners, shareholders, affiliates, agents, employees, successors, assigns, suppliers or contractors for special, indirect, consequential, punitive or exemplary damages of any nature or kind whatsoever, including loss of profits or revenue, outages or service interruptions of the Facility, loss of contracts, cost of capital or claims of customers, and MRU hereby releases the Port therefrom, and Port hereby releases MRU therefrom.

9.9. Intent. The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply, whether in contract, tort or otherwise, even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the Party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, and shall extend to such Party's affiliates, contractors and suppliers, and to its and their partners, shareholders, directors, officers, employees and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the expiration or earlier termination of the Agreement. The Parties confirm that (a) the exclusive remedies and measures of damages provided in this Agreement satisfy the

essential purposes hereof, (b) for breach of any provision for which an exclusive remedy or measure of damages is provided, such exclusive remedy or measure of damages shall be the sole and exclusive remedy, (c) the obligor's liability shall be limited as set forth in such provisions, and (d) with respect to such provisions, all other remedies or damages at law or in equity are waived.

9.10. Disclaimer. Except as expressly provided herein, MRU makes no representations, warranties or guarantees, express or implied, concerning the Facility, the supply of water for non-potable uses, the collection of Wastewater, or any other matter under this Agreement, and MRU disclaims any representation, warranty or guaranty implied by law, and any representations or warranties of custom or usage.

10. ADDITIONAL REQUIREMENTS INCORPORATED BY REFERENCE.

10.1. Laws Incorporated by Reference. The full text of the laws listed in this Section 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“**Mandatory City Requirements**”) are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2. Conflict of Interest. By executing this Agreement, MRU certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3. Prohibition on Use of Public Funds for Political Activity. In performing its obligations under this Agreement, MRU shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. MRU is subject to the enforcement and penalty provisions in Chapter 12G.

10.4. Consideration of Salary History. To the extent applicable, MRU shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” MRU is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. MRU is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. MRU is

required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5. Nondiscrimination Requirements.

(a) **Non Discrimination in Contracts.** MRU shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. MRU shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. MRU is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. MRU does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6. Local Business Enterprise and Non-Discrimination in Contracting Ordinance. MRU shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). MRU is subject to the enforcement and penalty provisions in Chapter 14B.

10.7. Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, MRU shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. MRU is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. MRU is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, MRU certifies that it complies with Chapter 12P.

10.8. Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, MRU shall comply with the requirements of Chapter 12Q. For each Covered Employee, MRU shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If MRU chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. MRU is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by MRU shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9. First Source Hiring Program. MRU must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and MRU is subject to the enforcement and penalty provisions in Chapter 83.

10.10. Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require MRU to remove from, City facilities personnel of any MRU or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11. Limitations on Contributions. By executing this Agreement, MRU acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, 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 months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of MRU's board of directors; MRU's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in MRU; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by MRU. MRU certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12. Consideration of Criminal History in Hiring and Employment Decisions.

(a) MRU agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. MRU is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a MRU's or subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.13. Public Access to Nonprofit Records and Meetings. If MRU receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, MRU must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.14. Food Service Waste Reduction Requirements. MRU shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.15. Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges MRU not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.16. Compliance with Laws. MRU shall keep itself fully informed of City’s Charter, codes, ordinances and regulations of City and of all state and federal laws in any manner affecting the performance of this Agreement and must at all times comply with such codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11. EVENT OF DEFAULT; REMEDIES

11.1. Events of Default. A Party shall be in default under this Agreement upon the occurrence of any one or more of the following (each an “**Event of Default**”):

(a) any petition of bankruptcy is filed by or against such Party or such Party is adjudicated as bankrupt or insolvent, and such adjudication is not vacated or in the case of an involuntary petition, dismissed within ninety (90) days; or if a receiver or trustee is appointed and such appointment is not vacated within ninety (90) days; or if such Party makes an assignment for the benefit of creditors;

(b) such Party fails to make, when due, any undisputed payment required pursuant to this Agreement and with respect to Port only, the Controller has certified the availability of funds for such undisputed amount, and such Party does not cure such failure within ninety (90) days following receipt of notice from the other Party demanding payment;

(c) such Party fails to perform any other of its material obligations under this Agreement in accordance with the requirements of this Agreement, and such Party does not cure such failure within ninety (90) days following receipt of notice from the other Party demanding such cure (or, if such failure is curable, within such longer period of time, not to exceed a maximum cure period of an additional ninety (90) days, as is reasonably necessary to accomplish such cure without material adverse effect on the other Party, if the cure cannot be reasonably accomplished within the initial ninety (90)-day period and the defaulting Party diligently commences and completes such cure in such longer period).

11.2. Remedies. Subject to the limitations set forth herein, upon the occurrence and during the continuation of an Event of Default, the Party not in default shall have the right to pursue any remedy under this Agreement now or hereafter existing under applicable law or in

equity, including an action for direct damages, specific performance, and obtaining temporary water from other sources upon the suspension of water deliveries for over 48 hours (or less if public health or safety necessitates Port obtaining temporary water from other sources) for the duration of such suspension; *provided, however*, that in the case of an Event of Default by MRU, Port shall provide any Project Lender with notice of such Event of Default and the Project Lender shall have the right to cure MRU's Event of Default as set forth in the Consent and Agreement to be entered into among MRU, Port and the Project Lender pursuant to the provisions of Section 8.C; *provided, further however*, that in the case of an Event of Default by the Other Park Tenant, MRU shall provide Port with notice of such Event of Default and Port shall have the right to cure within sixty (60) days of Port's receipt of the notice, the Other Park Tenant's Event of Default. In no event will MRU have any remedies against Port for a default or Event of Default by the MRC Park Tenant.

11.3. Additional MRU Remedy-Suspension of Delivery of Non-Potable Water. In addition to the remedies set forth in Section 11.2, MRU has the following additional remedy: if Port or the Other Park Tenant (as opposed to the Park MRC Tenant) fails to pay an undisputed amount under this Agreement within ninety (90) days of the due date (subject to additional conditions and time periods to pay in accordance with Sections 2.D and 2.E): MRU shall have the right, in addition to all other rights and remedies hereunder, after ninety (90) days prior written notice to Port and if applicable, the Other Park Tenant, to suspend or curtail the delivery of water for non-potable uses until such undisputed amount is paid in full. In no event will MRU have the right to suspend or curtail the delivery of water for non-potable uses for the Park MRC Tenant's failure to pay undisputed amounts then due or for the Park MRC Tenant's default under any other provision of this Agreement.

11.4. Additional Port Remedy. In addition to the remedies set forth in Section 11.2, subject to Force Majeure, Port and any Other Park Tenant has the following additional remedy if MRU fails to supply water to the Premises (either potable or non-potable) for 4-months: (i) Port and the Other Park Tenant, as applicable, will have no obligations to make any payments going forward until water service is fully restored (as opposed to intermittent non-potable water service), and (ii) no late charges or penalties will be assessed for any non-payment the period before water service is fully restored. For purposes of this Section 11.4, "4-months" or "4-month period" means a 4-month period where there is no water service or only intermittent water service to the Premises.

11.5. Remedies Cumulative. Except as otherwise expressly provided herein, all rights and remedies of the Parties set forth in this Agreement shall be cumulative and no remedy available to a Party not in default hereunder shall be exclusive of any other remedy.

12. FORCE MAJEURE.

12.1. Excused Performance. Except for the obligation to timely make the payments required under this Agreement, and except as otherwise provided herein, if a Party shall be wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through strikes, lightning, rain, wind, riots, fire, earthquake, flood, invasion, insurrection, equipment failures, the order of any court, judge or civil authority, war, any act of God, the public enemy, or any other similar cause reasonably beyond its exclusive control and not attributable to its intentional acts or negligence ("**Force Majeure**"), then and in any such event, the affected Party shall be excused from whatever performance is prevented by such event to the extent so prevented. For avoidance of doubt, any event wholly or partially preventing performance attributable to the acts, omissions, or negligence of a Party is not a Force Majeure event.

12.2. Consequences of Force Majeure. The failure to perform services or deliver non-potable water due to an outage caused by Force Majeure shall not result in a reduction in the fixed payment or operation and maintenance charges set forth in the Exhibit A during the occurrence of the applicable Force Majeure event so long as MRU is complying with all legal requirements.

12.3. Consequences of Extended Force Majeure. Notwithstanding any provision in this Agreement to the contrary, if either Party is rendered substantially unable to perform its material obligations hereunder due to Force Majeure and the continuing effect of such Force Majeure has not been fully removed or fully alleviated within twelve (12) months after the date such Force Majeure was initially declared, then either Party shall have the right, so long as such Force Majeure (or the effect thereof) continues, to terminate the Agreement, without further liability or responsibility hereunder (except for any liability which expressly survives the termination of the Agreement), upon thirty (30) days written notice to the other Party; provided, however, that Port shall not exercise its right to terminate the Agreement pursuant to this Section 12.3 if MRU has been unable to fully remove the effect of a Force Majeure event within the aforesaid twelve (12) month period despite its diligent efforts to do so, so long as MRU is continuing diligently in good faith to pursue remedial actions (including such construction or restoration work as is necessary) in order to remove the effect of such Force Majeure.

13. NOTICES.

Unless otherwise indicated in this Agreement, all written communications sent by the parties may be by U.S. mail, overnight delivery by a nationally recognized delivery service or e-mail, and shall be addressed as follows:

To Port: [Person and/or Position]
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111

To MRU: Mission Rock Utilities, Inc.
c/o Tishman Speyer Development, L.L.C.,
One Bush Street, Suite 500,
San Francisco, California, 94104
Attention: Assistant General Counsel

With a copy to:

EG Services, LLC
305 St. Peter St.
St. Paul, MN 55102

Any notice of default must be sent by registered mail or overnight delivery by a nationally recognized delivery service. Either party may change its address by giving the other party written notice of its new address as herein provided.

14. DISPUTE RESOLUTION.

14.1. With respect to any dispute which arises under this Agreement, MRU may submit to the Contracting Officer (as defined in Admin. Code Sec. 21) a written request for administrative review and documentation of MRU's claims. Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing MRU of its right to judicial review. A copy of the Contracting Officer's decision shall be mailed or otherwise promptly delivered to MRU. The Contracting Officer's decision shall be final unless appealed to a court of competent jurisdiction by MRU. If the Contracting Officer does not issue a written decision within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then MRU may proceed as if an adverse decision had been received.

14.2. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse MRU's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

15. ENTIRE AGREEMENT; AMENDMENTS.

This Agreement, including each exhibit attached and incorporated into this Agreement, constitutes the entire agreement between the parties relating to the rights granted and obligations assumed in this Agreement. With respect to any exhibit attached and incorporated into this Agreement, MRU shall have the right to modify such exhibit without the execution of a subsequent written amendment if such modification has been approved in writing by the City or Port. Except as provided herein, any oral representations or modifications concerning this Agreement have no force and effect unless and until contained in a subsequent written amendment that is executed and approved in the same manner as this Agreement.

16. GOVERNING LAW AND VENUE.

The formation, interpretation and performance of this Agreement is governed by the laws of the State of California. Each party consents to and agrees that venue for all litigation relative to the formation, interpretation and performance of this Agreement must be in San Francisco.

17. SUCCESSORS.

This Agreement is binding upon and will inure to the benefit of the respective successors and permitted assigns of the parties.

18. SEVERABILITY.

If any clause or provision of the Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws, or any rules or regulations of any governmental body or entity, effective during its term, the intention of the parties is that the remaining parts of

this Agreement will remain in full force and effect so long as the fundamental purpose of the Agreement is not destroyed.

19. WAIVER.

No waiver of any breach may be deemed to constitute a waiver of any other or subsequent breach.

20. SURVIVAL.

Sections 2.A-2.C, 2E-2.I, 8, 9.2, 9.4, 9.5, 9.6, 9.8, 9.9, 9.10, 11.2, 11.5, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, Section 4 of Exhibit A, and any other provisions of this Agreement that by their nature are intended to be performed or to be applicable, or that impose obligations, after the termination of this Agreement shall survive the expiration or earlier termination of this Agreement for the terms specified therein, if any, and otherwise indefinitely, but shall apply solely with respect to matters related to the period prior to the expiration or termination of this Agreement.

21. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which taken together constitute one and the same instrument.

22. SUNSHINE ORDINANCE.

MRU acknowledges that this Agreement and certain records associated herewith are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

23. MACBRIDE PRINCIPLES – NORTHERN IRELAND.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, MRU confirms that MRU has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In Witness Whereof, this Agreement is entered into as of the date first above written.

MRU:

MISSION ROCK UTILITIES, INC.,
a Delaware Corporation

By: _____

Name: _____

Its: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through the
SAN FRANCISCO PORT COMMISSION

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____

Name: _____

Deputy City Attorney

SCHEDULE 1
Initial Premises

EXHIBIT A Water Costs

1. Payment Composition

For each monthly billing period, the payment to be made by Port pursuant to Section 2.D of the Agreement shall be the sum of the following charges:

- (a) Non-Potable Water Capacity Charges (“**NPWCC**”), calculated in accordance with Paragraph 2 below; and
- (b) Non-Potable Water Flow Charges, calculated in accordance with Paragraph 3 below.

2. Non-Potable Water Capacity Charges (“NPWCC”)

2.1 The NPWCC shall be determined as follows:

- (a) Non-Potable Water Capacity Related Costs (“**NPWCRC**”) relative to a calendar year shall mean the following: (1) general and administrative costs including but not limited to management and personnel costs; (2) operation and maintenance costs including but not limited to maintenance, repairs and labor costs; (3) consumables including but not limited to water, sewer, chemicals, electricity and fuel costs; (4) debt service and financing costs net of interest income from Project Financing only; (5) net changes in working capital; (6) capital expenditures not amortized through debt service and net increases during such year for reserves for replacements and capital improvements; (7) amounts not collectible for NPWCC due; (8) late fees and charges relative to the NPWCC; (9) amounts, if any, required to meet minimum debt coverage requirements under any indenture or any financing debt agreement; (10) all taxes and fees imposed on MRU related to the non-potable water system, including excess use charges; (11) all other cost reasonably related to the operation of the non-potable water system; (12) less amounts received from Non-Potable Water Flow Charges under this Agreement and Non-Potable Water Flow Charges under the Master Association RWSA; and (13) less amounts that are included in any of the foregoing items but are MRU’s responsibility as described in Section 2.G. The NPWCRC shall not include non-cash items such as depreciation or amortization costs.
- (b) “**NPW Aggregate Capacity**” shall be the sum of all MRU’s non-potable water customers’ Contract Capacity during a calendar year; provided that NPW Aggregate Capacity for Phase 1 is 25,462 gallons per day. “**Contract Capacity**” during any applicable period of time shall be the portion of NPW Aggregate Capacity that MRU has allocated for use by a customer. MRU shall determine each customer’s Contract Capacity in MRU’s reasonable discretion based on estimated customer usage, subject to the schedule below. “**Port’s Contract Capacity**” during any applicable period of time shall be the portion of NPW Aggregate Capacity that MRU has allocated for use by the Port in accordance with the schedule below; provided that Port’s Contract Capacity for Phase 1 is

6,575 gallons per day). NPW Aggregate Capacity and Port Contract Capacity are projected to follow the following schedule:

	Phase 1	Phase 1-2	Phase 1-3
	Gallons Per Day Peak		
Port (Contract Capacity)	6,575	8,091	8,800
Other Users	18,887	32,957	35,963
Total (NPW Aggregate Capacity)	25,462	41,048	44,763

- (c) For each calendar year, the NPWCC shall be equal to the projected NPWCRC divided by NPW Aggregate Capacity multiplied by the Port’s Contract Capacity. The Port shall pay the annual NPWCC in the calendar year beginning such January 1 in twelve equal billing period installments.
- (d) If the First Service Date commences after January 1 of a calendar year, the NPWCC shall be equal to the projected NPWCRC divided by NPW Aggregate Capacity, divided by twelve, multiplied by the Port’s Contract Capacity, and then multiplied by the number of months from the Port’s First Service Date to the end of the calendar year. The Port shall pay the annual NPWCC equal billing period installments for the number of months from the Port’s First Service Date to the end of the calendar year.
- (e) The Port shall pay the annual NPWCC in equal billing period installments for the number of months from the Port’s First Service Date to the end of the calendar year.

3. Non-Potable Water Flow Charges (“NPWFC”)

3.1 The NPWFC shall be determined as follows:

- (a) The Non-Potable Water Flow Charges (“NPWFC”) is a monthly charge calculated based on the monthly metered non-potable water usage in cubic feet times the Non-Potable Water Flow Rate (“NPWFR”). The NPWFR is initially set at **\$33.12** per 100 cubic feet of water (“NPW Base Rate”) for service prior to January 1, 2023. The NPW Base Rate will increase by 5% annually each January 1st, commencing on January 1, 2023.

4. Port Annual Cap

4.1. Notwithstanding anything set forth in this Agreement, in no event will the total annual charges or fees (including but not limited to the NPWCC and Non-Potable Water Flow Charges) or any other payment obligation of Port, Park MRC Tenant or any Other Park Tenant under this Agreement exceed the lesser of (i) the amount certified by the Controller for the applicable period or (ii) \$672,145 for each calendar year (the “**Port Annual Cap**”).

4.2. The Port Annual Cap for each calendar year will increase by the Escalator as defined in the RMA each January 1st, commencing on January 1, 2024. The Port Annual Cap cannot otherwise

increase without Port Commission and the City's Board of Supervisors and the Mayor's approval. If during the term of the Agreement MRU and the Port staff determine and mutually agree that (i) an increase in the Port Annual Cap is appropriate as a result of (a) applicable statutes and regulations or (b) to cover Port's allocable share of costs in connection with a capital event affecting the upstream sewer improvements related to the Facility, or (ii) that a decrease in the Port Annual Cap is appropriate as a result of future development resulting in a disproportionately high Port Annual Cap, then the parties may seek such necessary approvals. No party will be compelled to enter into any such amendment and any approval by the Port Commission and Board of Supervisors and the Mayor will be granted or denied at those parties' sole discretion.

5. **Projected Costs.** The maximum Port Annual Cap (if escalated by the maximum 5 percent each year for the entire term) is set forth in Exhibit A-2. An illustrative example of hypothetical costs based on the completion of Phase 2 and Phase 3 is set forth in Exhibit A-3.

EXHIBIT A-2
Port Projected Annual Cost Cap

The table below illustrates the Port Annual Cap for Year 1 of the Agreement and future years if hypothetically escalated at 5 percent, the highest possible rate of the Escalator as defined in the RMA. The actual Port Annual Cap for each calendar year will actually increase by the Escalator as defined in the RMA each January 1st, commencing on January 1, 2024 and may be amended if approved by the Port Commission, Board of Supervisors, and Mayor. The columns labeled Port Non-Potable Water Capacity Charges and Port Non-Potable Water Flow Charges in the table below illustrate hypothetical projected costs and are for illustrative purposes only.

Year	Port Non-Potable Water Capacity Charge (\$)	Port Non-Potable Water Flow Charge (\$)	Port Annual Cap (\$)
1	607,534	64,611	672,145
2	637,911	67,841	705,752
3	669,806	71,234	741,040
4	703,297	74,795	778,092
5	738,462	78,535	816,997
6	775,385	82,462	857,846
7	814,154	86,585	900,739
8	854,862	90,914	945,776
9	897,605	95,460	993,064
10	942,485	100,233	1,042,718
11	989,609	105,244	1,094,854
12	1,039,090	110,507	1,149,596
13	1,091,044	116,032	1,207,076
14	1,145,596	121,833	1,267,430
15	1,202,876	127,925	1,330,801
16	1,263,020	134,321	1,397,341
17	1,326,171	141,038	1,467,208
18	1,392,479	148,089	1,540,569
19	1,462,103	155,494	1,617,597
20	1,535,209	163,269	1,698,477
21	1,611,969	171,432	1,783,401
22	1,692,568	180,004	1,872,571
23	1,777,196	189,004	1,966,200
24	1,866,056	198,454	2,064,510
25	1,959,358	208,377	2,167,735
26	2,057,326	218,795	2,276,122
27	2,160,193	229,735	2,389,928
28	2,268,202	241,222	2,509,424
29	2,381,612	253,283	2,634,896
30	2,500,693	265,947	2,766,640

EXHIBIT A-3
Port Projected Costs

For illustrative purposes only, the table below illustrates hypothetical projected costs based on the completion of Phase 2 and Phase 3 of the project and the maximum allowable increase of 5 percent annually.

Year	Port Non-Potable Water Capacity Charge (\$)	Port Non-Potable Water Flow Charge (\$)	Total Projected Costs (\$)
1	552,304	64,611	616,915
2	579,919	67,841	647,760
3	608,915	71,234	680,148
4	639,361	74,795	714,156
5 (Phase 2)	512,170	95,421	607,591
6	537,778	100,192	637,970
7	564,667	105,202	669,869
8	592,900	110,462	703,362
9	622,545	115,985	738,530
10 (Phase 3)	652,029	131,862	783,891
11	684,630	138,455	823,085
12	718,862	145,377	864,239
13	754,805	152,646	907,451
14	792,545	160,279	952,824
15	832,173	168,293	1,000,465
16	873,781	176,707	1,050,488
17	917,470	185,543	1,103,013
18	963,344	194,820	1,158,163
19	1,011,511	204,561	1,216,072
20	1,062,086	214,789	1,276,875
21	1,115,191	225,528	1,340,719
22	1,170,950	236,805	1,407,755
23	1,229,498	248,645	1,478,143
24	1,290,973	261,077	1,552,050
25	1,355,521	274,131	1,629,652
26	1,423,297	287,837	1,711,135
27	1,494,462	302,229	1,796,692
28	1,569,185	317,341	1,886,526
29	1,647,645	333,208	1,980,852
30	1,730,027	349,868	2,079,895

EXHIBIT B Project Scope

1 General

1.1 Facility Information

The Mission Rock Blackwater Treatment Facility (MRBWTF) is an advanced water recycling facility treating a portion of the combined blackwater/greywater waste stream¹ from the Mission Rock development.

Project Applicant	Mission Rock Utilities, Inc.
Facility Name	Mission Rock Blackwater Treatment Facility
Facility Address	No street address has been assigned yet to the building where the facility will be located. The facility will be in Parcel "B," an exterior parcel within the Mission Rock project boundary, bound by 3rd Street to the west, the future Spur Street to the north, the future Plank Road to the east and the future Channel Street to the south.
Facility Owner	Mission Rock Utilities 24 Willie Mays Plaza San Francisco, CA 94107
Development Type	<input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Mixed <input checked="" type="checkbox"/> New <input type="checkbox"/> Existing <input type="checkbox"/> Other
Total Square Footage	Commercial: 2,105,307 square feet Residential: 959,462 square feet Total: 3,354,580 square feet
Number of Floors	See Table 2
Residential Units	1,142
Occupancy and Staffing	Hours Building Will Be Occupied: 24 hrs/day Hours Building Staff Will be Present: Building Engineers 12 hrs/day, 5 days/week. Security 24 hrs/day, 7 days/week. Days of Week Building will be Occupied: 7-days/week

¹The term "blackwater" is used in this Design Report to refer to municipal wastewater generated by the mixed-use (residential, retail, restaurant and office) development. Blackwater is defined in the San Francisco Health Code, Article 12C, Section 12C.2 as "wastewater containing bodily or other biological wastes, as from toilets, dishwashers, kitchen sinks and utility sinks" while graywater is defined to include "wastewater from bathtubs, showers, bathroom sinks, lavatories, clothes washing machines and laundry tubs." This project will have a single system of waste piping collecting both blackwater and graywater, as defined in Section 12C.2, and once combined will be referred to as blackwater. "Blackwater," as used in this document, includes blackwater wastes described in Section 12C.2 as well as greywater wastes.

Alternate Water Sources	<input type="checkbox"/> Rainwater <input type="checkbox"/> Foundation Drainage <input type="checkbox"/> Stormwater <input checked="" type="checkbox"/> Greywater <input checked="" type="checkbox"/> Blackwater
Total Daily Inflow	55,200 gpd average annual 64,000 gpd maximum day
Non-Potable Water End Uses (indoor)	<input checked="" type="checkbox"/> Toilet and Urinal Flushing for 956 toilets and 51 urinals in Phase 1 buildings. Number of fixtures for Phase 2 – 4 buildings is unknown at this time. <input checked="" type="checkbox"/> Priming Drain Traps <input type="checkbox"/> Clothes Washing
Non-Potable Water End Uses (outdoor)	<input checked="" type="checkbox"/> Subsurface Irrigation <input checked="" type="checkbox"/> Drip or other surface non-spray irrigation <input type="checkbox"/> Spray Irrigation <input type="checkbox"/> Decorative Fountains and Impoundments <input checked="" type="checkbox"/> Cooling Applications (project phases 1, 2 and 3 only) <input type="checkbox"/> Dust Control/Street Cleaning
Average Daily Distribution	37,350 gpd (average annual) 42,900 gpd (peak day)

The Mission Rock development is located within the City and County of San Francisco and will consist of 11 parcels with a mixture of residential, restaurant, office and other retail occupancies. The site is bounded by Third Street to the west, Mission Rock Street to the south, China Basin to north and Piers 48 and 50 along the San Francisco Bay to the east.

The sanitary sewer layout for those parcels and the location of the lift station and MRBWTF is shown in Figure 1.1.



Figure 1.1 – Sanitary Sewer and Building Locations for the Mission Rock Development

The areas for each of the occupancies in each parcel/building is detailed in Table 1.2. The development will house approximately 2,400 permanent residents along with transient occupants for 1.3 million square feet of office space and 207,000 square feet of retail space.

Table 1.2 – Mission Rock Project Data

Bldg	Num Flrs	Gross Sq.Ft.	Residential RSF ²	Residential Units	Residents	Non-Food Retail RSF	Food-Related RSF	Office RSF
A	23	370,361	219,335	282	564	7,474	7,474	48,447
B	8	273,506	-			9,249	9,249	255,008
C	13	354,826	-			13,489	13,489	327,848
D1	23	240,494	240,494	259	569	-	-	-
D2		994,307				4,647	4,647	-
E	6	141,330	-			7,153	7,153	127,024
F	23	310,183	177,510	258	516	18,741	18,741	-
G	13	299,603	-			8,140	8,140	283,323
H	11	200,315	180,697	192	422	9,809	9,809	-
I	6	151,932	-			9,890	9,890	127,024
J	6	151,982	-			10,136	10,136	132,153
K	11	130,469	122,162	131	288	4,154	4,154	-
CBP ³		1,500					1,500	
TOTAL		3,620,808	940,198	1,122	2,359	102,882	104,382	1,305,514

The north and south halves of the Mission Rock project will have separate blackwater collection systems; blackwater for properties north of Channel Street/Lane and Mission Rock Square will flow to the Influent Pump Station and the Blackwater Treatment Facility (BWTF) in Building B, the subject of this report. Sewage from properties to the south will flow by gravity to the SFPUC sewer in Mission Rock Street. Sewage flows to be handled by the MRBWTF are detailed in Table 1.3a and 1.3b.

Table 1.3a – Blackwater Flows (gpd) to MRBWTF

Bldg	Primary Use	Total	Residential	Restaurant	Other Commercial
A	Residential	26,009	19,556	5,479	974
B	Commercial	11,298	-	6,781	4,517
F	Residential	32,011	17,891	13,739	381
G	Commercial	9,020	-	5,968	3,053
J	Commercial	9,873	-	7,431	2,442
K	Residential	13,123	9,993	3,045	84
CBP ³	Park	1,779		1,100	679
	Total	103,113	47,440	43,542	12,131

² Does not include space for shared amenities, misc. circulation and back-of-house uses

³ CBP = China Basin Park

Up to 62% of these flows (64,000 gpd out of 103,113 gpd) will be processed by the BWTF. The remaining flow will be pumped directly to the SFPUC sewer.

Table 1.3b – Blackwater Flows (gpd) Directly to SFPUC Sewer

Parcel	Primary Use	Total	Residential	Restaurant	Other Commercial
C	Commercial	15,729	-	9,889	5,840
D1	Residential	19,757	19,757	-	-
D2	Parking	3,505	-	3,407	98
E	Commercial	7,546	-	5,244	2,302
H	Commercial	22,036	14,646	7,191	199
I	Commercial	9,695	-	7,250	2,444
	Total	78,267	34,403	32,981	10,883

The total blackwater flow generated by the development is estimated to be **181,380 gpd**.

Exhibit C—Location of Non-Potable Water Delivery Points

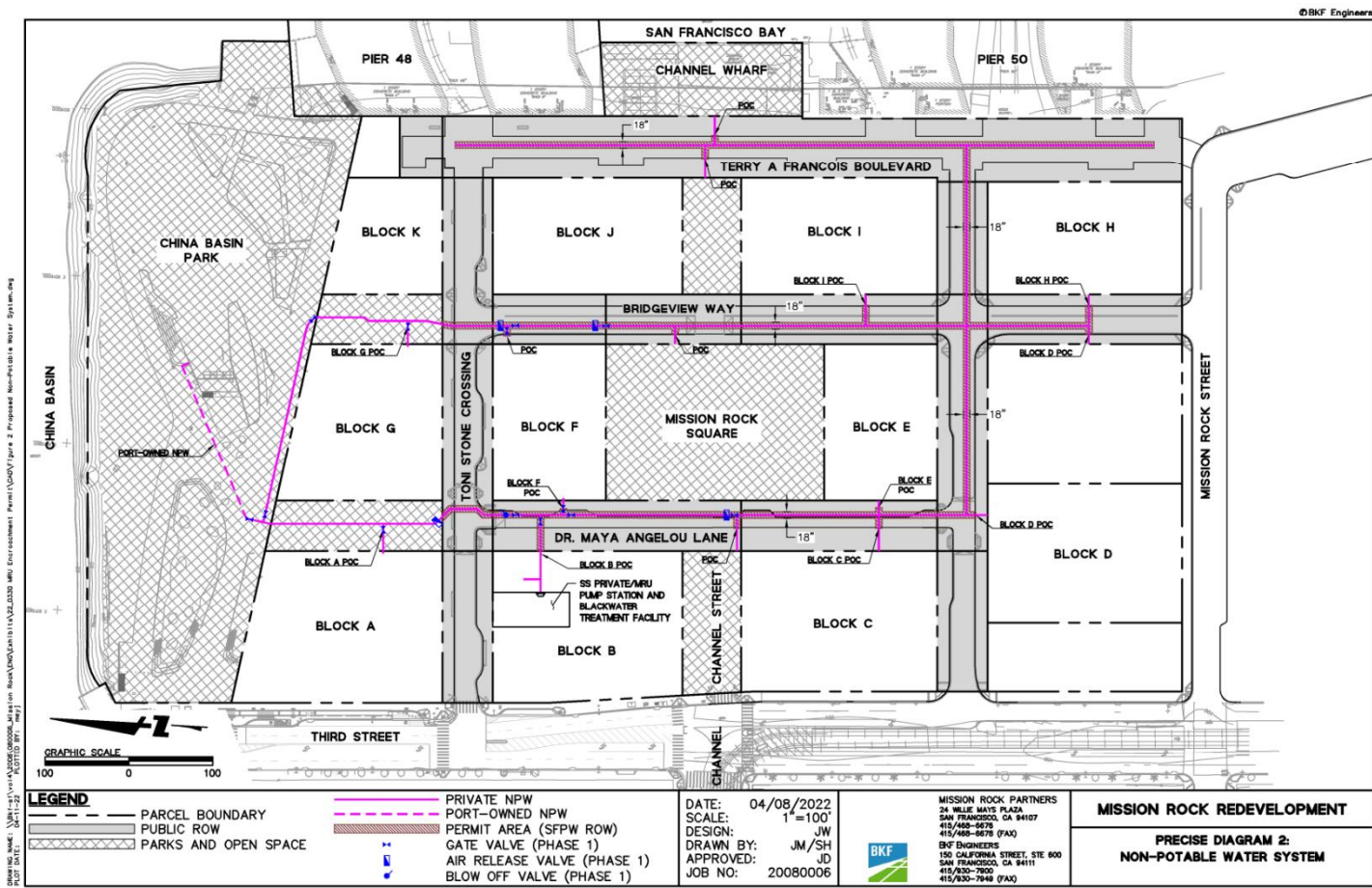


Exhibit D—Location of Wastewater Collection Points

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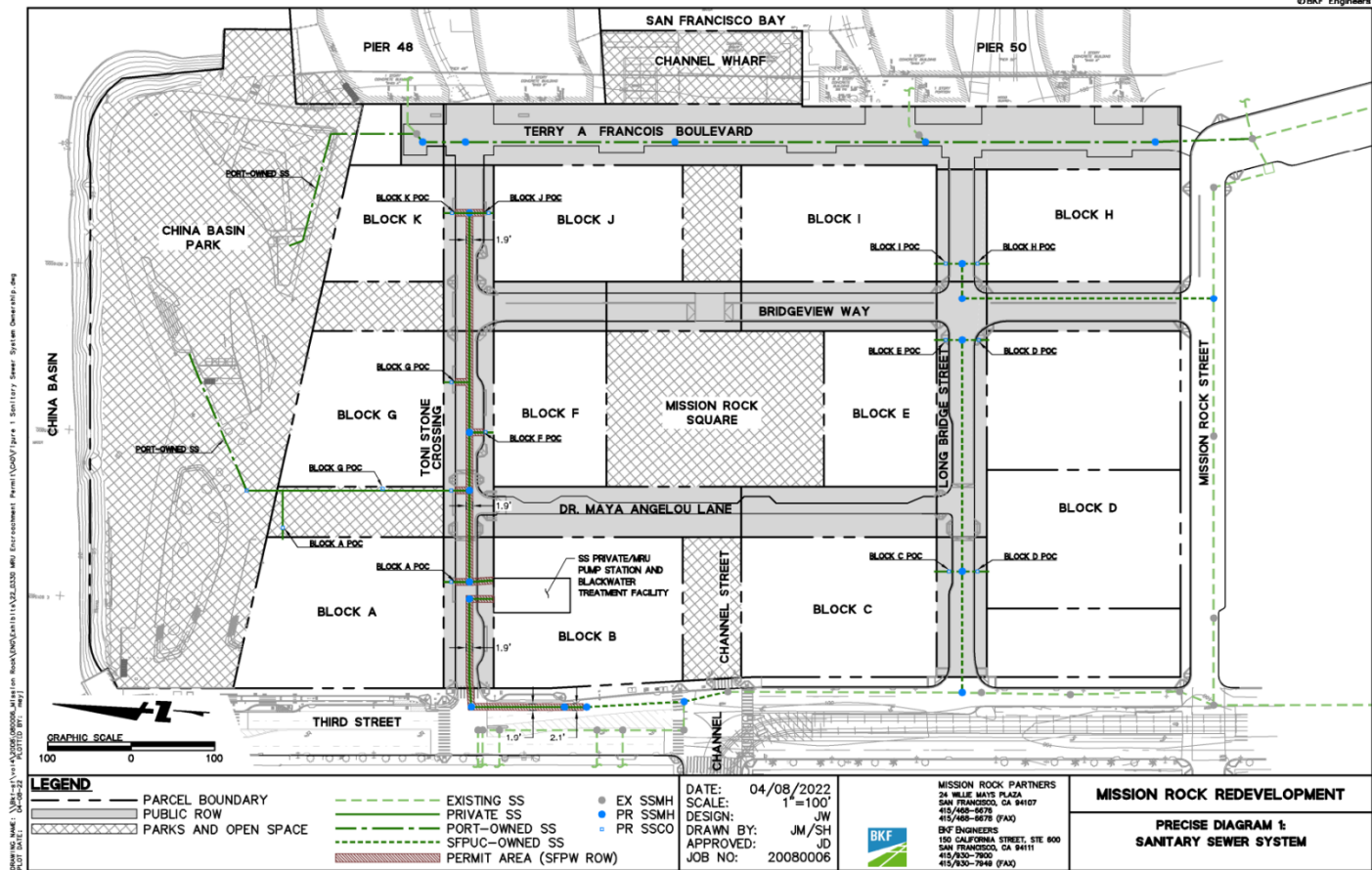


Exhibit E—Location of Equipment Owned by MRU and Port

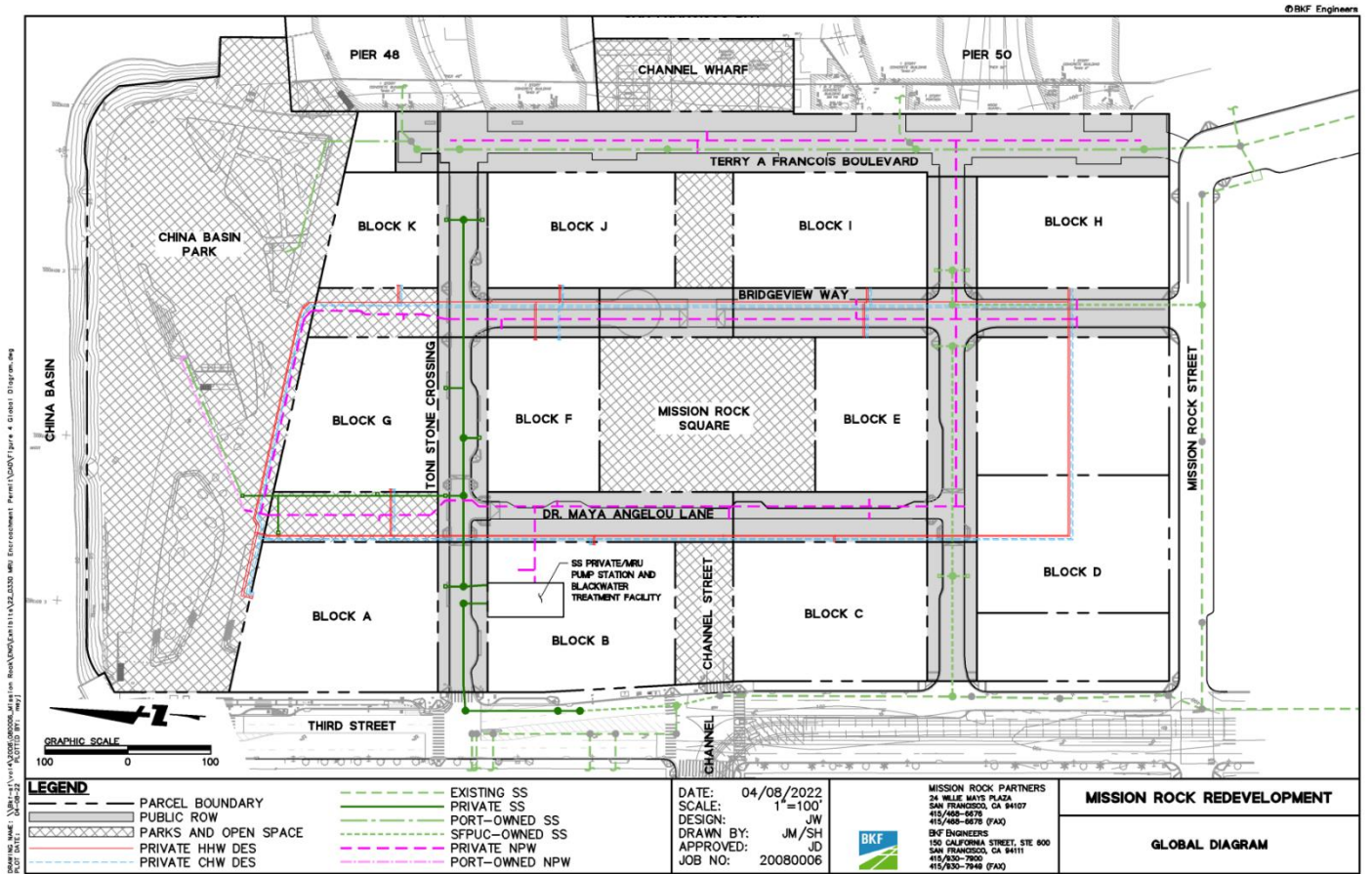


Exhibit F—Description of Equipment Owned by MRU and Port

Non-Potable Water System

MRU NPW equipment will be installed in the public right of way, and in Port Open Spaces, up to the point of connection as designated on the drawing in Exhibit C. Generally, the SF Port will own all NPW equipment on the service side of the point of connection designated on the drawing in Exhibit C. The MRU-owned NPW flow meter assembly will be installed in the China Basin Park F&B Pavilion. Other MRU-owned NPW flow meters used for irrigation will be installed at each point of connection.

See Exhibit E for a plan exhibit showing NPW equipment ownership.

Wastewater (Sanitary Sewer) System

MRU will own the Blackwater Treatment Plant and the effluent sanitary sewer force main from the plant in Toni Stone Crossing and Third Street up to the second manhole. SFPUC owns the sanitary sewer main downstream from the second manhole. MRU will also own the sanitary sewer main in the public right of way in Dr. Maya Angelou Lane and Toni Stone Crossing to the point of connection at Building B.

The SF Port will own all wastewater equipment in China Basin Park and Mission Rock Square serving the structures in those Open Space parcels.

See Exhibit E for a plan exhibit showing wastewater system equipment ownership.

Exhibit G—MRU Interconnection Requirements (Including Maximum Pressure, Flow, Temperature, Water Quality and Other Data Related to the Delivery of Recycled Water)

3 Effluent Requirements

The recycled water quality is governed by regulations of the San Francisco Department of Public Health⁶. Many of the treatment requirements in the Director’s Rules and Regulations are treatment-performance based and will be discussed further in the sections detailing unit process design. Effluent water quality limits are:

Parameter	Water Quality Limit	Monitoring Frequency
BOD ₅	Maximum Concentration ≤ 25 mg/L 4-week Avg Concentration ≤ 10 mg/L (startup)	Weekly, Monthly
TSS	Maximum Concentration ≤ 30 mg/L 4-week Avg Concentration ≤ 10 mg/L (startup)	Weekly, Monthly
Virus	8.5 log reduction	Continuously via surrogate parameters
Protozoa	7.0 log reduction	Continuously via surrogate parameters
Bacteria	6.0 log reduction Meet the Total Coliform requirements listed below: <ul style="list-style-type: none"> • The median concentration shall not exceed an MPN of 2.2 /100 mL utilizing the bacteriological results of the last seven days for which analyses have been completed; and • The maximum number shall not exceed an MPN of 23 /100 mL in more than one sample in any 30 day period; and • No sample shall exceed an MPN of 240 /100 mL at any time. 	Daily
Turbidity	Membrane Filter: maximum turbidity shall not exceed 0.2 NTU more than 5% of the time within a 24-hour period. No sample shall exceed 0.5 NTU at any time.	Continuously
Chlorine Residual	The chlorine residual shall be ≤ 0.5 mg/L. A chlorine residual measurement below 0.5 mg/L for a duration of more than one hour must be reported to DPH; diversion may not be required but should be considered while the problem is corrected.	Continuously
pH	At all times the pH shall be between 6 and 10 ⁷	Weekly
Odor	The system shall not emit offensive odors	N/A

Non-Potable Water Distribution

MRU will own, operate, and maintain the non-potable water (NPW) distribution system, as well as the forced sewer main from the black water recycling plant in building B to the second manhole in 3rd Street.

Piping

- Ductile Iron Pipe (DIP) recycled water piping is used, according to San Francisco Public Utility Commission (SFPUC) Water standards.
- DIP class 53, zinc-coated with V-Bio polyethylene encasement and cement-mortar lined double the standard thickness. Manufacturer: American Ductile Iron Pipe with Fastite® bell and spigot joint with Fast-Grip® restraining gaskets.

Fittings

- DIP bell and spigot push-on Tyton joint with Field-Lok™ restraining gasket. Manufacturer: Tyler/Union, Sigma or Star Pipe.

Valves

- Gate valves with slip-on ends and Field-Lok™ restraining gasket. Epoxy-coated inner and outer surfaces. Manufacturer: Mueller.
- H/20 rated valve boxes with bolt down cast iron lids marked “MRU RECLAIMED WATER”.

Piping System

- The NPW piping system is using fully restrained joints, thereby not requiring any thrust blocks.

Design Parameters

- Operating pressure of 65 psi with a max pressure of 90 psig and a test pressure of 225 psig.

Forced Sewer Main

Piping

- HDPE sewer piping according to SFPUC Water standards.
- DR17 PE3408 HDPE with a minimum pressure rating of 125 psig.

Fittings

- Rated for the same pressure as the mating pipes.

Valves

- Not applicable.

Piping System

- The forced sewer piping system is using fully restrained joints, thereby not requiring any thrust blocks.
- All joints are heat fused.

Design Parameters

- Operating pressure 13 psi with a max pressure of 16 psig and a test pressure of 115 psig.
- Influent temperature assumed at an average of 20 deg C, with a 16 deg C minimum and 24 deg C maximum