

**INTERDEPARTMENTAL MASTER ENCROACHMENT PERMIT  
AND MAINTENANCE AGREEMENT (PIER 70)**

**1. PARTIES AND BACKGROUND**

**1.1 Parties.** The City and County of San Francisco Public Works (the “**Department**” or “**Public Works**”) enters into this Encroachment and Maintenance Agreement (“**Agreement**”) with the Port of San Francisco (the “**Permittee**” or “**Port**”), on this date, February 27, 2024 for reference purposes only (“**Reference Date**”). The Interdepartmental Master Encroachment Permit collectively refers to the Department approved plan(s), street improvement permit(s), and other authorizations, and this Agreement, including its Attachments, Addenda, and accompanying documents (the “**Permit**” or “**IMEP**”). In this Agreement, “the **City**” refers to the City and County of San Francisco and all affiliated City agencies including, but not limited to, the Department, the San Francisco Public Utilities Commission (“**SFPUC**”), the San Francisco Fire Department (“**SFFD**”), the San Francisco Municipal Transportation Agency (“**SFMTA**”), and Port in its regulatory capacity, but not in Port’s proprietary capacity as landowner and Permittee. (Port and City are collectively, the “**Parties**”).

**1.2 Background.**

**1.2A** This Interdepartmental Master Encroachment Permit is approved by the Board of Supervisors of the City and County of San Francisco and issued to the Port of San Francisco, a department of the City and County of San Francisco under the authority of the Port Commission and pursuant to its trust obligations pursuant to the Burton Act. The terms of this Permit are based upon the identity and relationship of Public Works and the Port as constituent parts of the City and County of San Francisco, and as cooperative partners in exercising their respective responsibilities pursuant to the San Francisco Charter, Municipal Code, California Constitution, and other applicable laws. The Parties acknowledge and anticipate that the terms and conditions may differ for a Master Encroachment Permit issued to a different permittee, including pursuant to any assignee hereunder.

**1.2B** The City entered into a Development Agreement with FC Pier 70 LLC (“**Master Developer**”) dated as of May 2, 2018, and recorded in the City’s official records on May 25, 2018, as Instrument No. DOC-2018-K619432-00 (the “**DA**”), and Port entered into a Disposition and Development Agreement with Master Developer, dated as of May 2, 2018, and recorded in the City’s official records on May 25, 2018, as Instrument No. DOC-2018-K619435-00, as may be amended (the “**DDA**”).

**1.2C** The Port and Master Developer also entered into a Master Lease dated as of May 2, 2018, a memorandum of which was recorded in the Official Records on May 25, 2018 as Document No. 2018-K619436-00 (the “**Memorandum of Master Lease**”), as amended by that certain First Memorandum of Technical Corrections recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531, and as further amended by that certain Second Memorandum of Technical Corrections dated as of January 15, 2020 and recorded in the

Official Records on January 16, 2020 as Document No. 2020-K891134 (as amended, the “**Master Lease**”).

**1.2D** Each of these agreements related to the development of a portion of the Port’s property, which includes the area subject to the Pier 70 Special Use District (SF Planning Code Section 249.79) (the “**SUD**”), which is generally bounded by 20<sup>th</sup> Street on the north, Illinois Street on the west, 22nd Street on the south, and the San Francisco Bay on the east. Pursuant to the DDA, Master Developer will construct throughout the SUD, roadways, utility and traffic facilities, and other appurtenances, which are intended to be accepted by the City.

**1.2E** The purpose of this Agreement is to authorize the construction, placement, maintenance and repair of the custom improvements that will be located within the public right-of-way from time to time. This Agreement delegates to the Public Works Director the authority to amend this Agreement from time to time as necessary to cover future custom improvements constructed pursuant to the DDA.

## **2. PERMIT INFORMATION**

**2.1 Interdepartmental Master Encroachment Permit (IMEP) Approval:** Board of Supervisors Resolution No. [REDACTED] on file with the Clerk of the Board in File No. [REDACTED].

**2.2 Description/Location of Property (See Attachment 1):** The Pier 70 28-Acre Site Project Area, as described in Attachment 1 (the “**Project Area**”). The Pier 70 project is roughly bounded by the northern edge of the 20th Street right-of-way, San Francisco Bay to the east, the southern edge of the 22nd Street right-of-way, and the eastern edge of the Illinois Street right-of-way, and the intersections of Illinois Street and both 20th and 22nd Streets.

**2.3 Description/Location of Full Project Area Subject to Permit (See Attachment 2, Global Diagram):** Those portions of 20th, 21st, 22nd, Illinois, Louisiana (except between 20th and 21st Streets), Maryland, Michigan (except between 20th and 21st Streets), and Waterfront Streets within the boundaries described in Section 2.2, above.

### **2.4 Description of Proposed Improvements (See Attachment 2):**

- (a) Cobblestones and pavers in streets, sidewalks, and crosswalks
- (b) Custom benches
- (c) Custom bike racks
- (d) Custom waste receptacles
- (e) Bollards
- (f) Wayfinding and interpretive signs
- (g) Building 15 Structural Frame
- (h) Sidewalk landscaping, irrigation, and tree well pavers unit pavers
- (i) Retaining walls

The term “**Improvements**” shall mean those improvements in the public right-of-way as described

in the attachments listed in Section 2.8, the Infrastructure Plan (DDA Exhibit B8), and, once issued, the street improvement permit or other permits for encroachments for each phase (“SIPs”), as those attachments and SIPs are amended and supplemented from time to time, including as Permit Area is annexed and as updated with “as-built” plans. Public Works will add Improvements owned by Port to the City’s GIS database.

**2.5 Permit Type:** Interdepartmental Master Encroachment Permit.

**2.6 Master Developer**

**FC Pier 70, LLC**, a Delaware limited liability

Brookfield Properties

Attn: \_\_\_\_\_

685 Market Street, Suite 500

San Francisco, California 94105

Re: Pier 70

**2.7 Permittee**

**The Port of San Francisco**

Attn: Elaine Forbes, Executive Director

Pier 1, The Embarcadero

San Francisco, CA 94111

**2.7 Contact Information.** The Permittee shall provide to Public Works, Bureau of Street Use and Mapping (“BSM”), SFMTA, 311 Service Division, and SFPUC the information for a minimum of two (2) contact persons with direct relation to or association with, or is in charge of or responsible for, the Permit. Permittee shall notify both Public Works’ Bureau of Street Use and Mapping and SFMTA within thirty (30) calendar days of any changes in the Permittee’s personnel structure, and submit the required contact information of the current and responsible contacts. If and when the City’s 311 Service Division (or successor public complaint system program) allows direct communications with the contact person(s) for the Permit, the Permittee shall participate in this program.

Contact Person Number 1

Last Name, First Name: \_\_\_\_\_ [Port to provide]

Title/Relationship to Owner: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

Email Addresses: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Office Address: \_\_\_\_\_

Contact Person Number 2

Last Name, First Name: \_\_\_\_\_ [Port to provide]

Title/Relationship to Owner: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

Email Addresses: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Office Address: \_\_\_\_\_

**2.8 List of Attachments.** The documents listed below are attached to or accompany this Permit, which will be amended or further supplemented with the documents identified in this Section 2.8 and Section 5 following annexations of Permit Areas into the Permit.

**Attachment 1: Property Information.** Map identifying the property.

**Attachment 2: Global Area and Permit Area Documentation.**

The “**Global Area**” refers to the full, project-wide area that will include Improvements subject to this Permit. The “**Global Area Documentation**” shall consist of the following:

- (a) Diagram showing the Global Area and generally describing the type and location of Improvements subject to this Permit for all phases of the project (“**Global Diagram**”).
- (b) A general description of the Improvements.

The “**Permit Area**” refers to areas that include constructed or installed Improvements subject to Permittee’s maintenance responsibility. The Permit Area shall refer to areas for which a Notice of Annexation has been approved by the Director, and if required pursuant to Section 6.1, has been recorded, which may include Improvements subject to maintenance responsibilities that have been assigned to a Home Owners’ Association or Master Owners’ Association (“**Owners’ Association**”). As described in Section 6, subsequent Notices of Annexation shall establish specific Permit Areas and, if required, identify the fronting properties associated with the Permit Areas. The “**Permit Area Documentation**” shall consist of the following:

- (c) Written description of the area where the encroachment(s) exist and the boundaries.
- (d) A detailed description of the Improvements.
- (e) Diagram showing the Permit Area and identifying all Improvements in the Permit Area (“**Precise Diagram**”). The Precise Diagram shall be a separate document from the SIPs.

**Attachment 3: Maintenance Documents**

**Attachment 3A: Maintenance Matrix.** Table listing all Improvements in the Global Area and identifying the maintenance responsibility for them (“**Maintenance Matrix**”). The table shall include all physical treatments, facilities, and elements, whether standard or custom, to clarify responsibility. As used herein, the term “Maintenance Matrix” refers only to those portions of Attachment 3A addressing the Improvements subject to the Permit (i.e., Port encroachments on public right-of-way in Public Works jurisdiction); other portions of the document

are included for convenience only and are not incorporated by reference into this Agreement.

**Attachment 3B: Maintenance Plan.** A written document that contains a description of the means and methods to maintain the Improvements (the “**Maintenance Plan**”). For the Global Area, the description may be general. For the Permit Area, the description must be detailed. The Maintenance Plan shall identify the daily, weekly, monthly, and annual routine maintenance, repair and replacement tasks, as applicable (“**Permitted Activities**”), and any specialized equipment (in the event that the Improvements incorporate such specialized equipment) necessary for continued operation of the Improvements. For each category of the Permitted Activities, Permittee shall provide the regular (e.g. daily, weekly, etc.) estimated expenses, including labor hours, cost per hour, and materials needed for maintenance. In addition, Permittee shall provide a total estimated annual operating expense and include: regular maintenance expenses, replacement costs, costs for any specialized equipment (in the event that the Improvements incorporate such specialized equipment) necessary for continued operation of the Improvements, and the expected lifespan of any custom materials subject to regular use. The Maintenance Plan also shall identify whether a Community Benefit District, Business Improvement District, Community Facilities District or similar Special Tax-Based Entity (a “**Special Tax Entity**”) will expend monetary or staff resources on the Permit Area for maintenance or other activities, and documentation, to the Public Works Director’s reasonable satisfaction, that the monetary and/or staff resources are available and committed to perform the maintenance obligation.

**Attachment 4: Operations Manual List.** Permittee shall submit a document or manual describing how to operate any specialized equipment necessary for continued operation of the Improvements along with manufacturer’s instructions for operation and maintenance (“**O&M Manuals**”) and other pertinent information about the equipment. These documents are for Public Works file purposes and not attached to this Agreement; a list of the O&M Manuals will be attached to this Agreement. At the City Engineer’s discretion, the City Engineer may allow the Permittee to defer submission of the Operations Manuals and the list until completion of the Improvements in accordance with the SIPs.

**Attachment 5: Notice of Assignment.** See Section 16.

The City Engineer shall review and certify the description of the **Global Area and Permit Area** (Attachment 2), **Maintenance Matrix** and **Maintenance Plan** (Attachment 3), and **O&M Manuals** (Attachment 4), ), and any necessary updates submitted with a Notice of Annexation. The Department shall not issue the permit until the City Engineer has completed the review and certified the required attachments.

### 3. EFFECTIVE DATE; REVOCABLE, NON-EXCLUSIVE PERMIT; RECORDATION

(a) Following Board of Supervisors approval and confirmation the Department has received all required permit documents and fees, the Department shall issue the approved Permit and provide written notice of issuance of the Permit. The date this Maintenance Agreement is finally executed shall be the “**Effective Date.**”

(b) The privilege given to Permittee under this Agreement is revocable in accordance with this Agreement, personal, non-exclusive, non-possessory, and effective only insofar as the rights of City in the public right-of-way (“**PROW**”) are concerned. This Permit does not grant any rights to construct or install Improvements in the Permit Area; construction and installation of the Improvements will be authorized under a separate street improvement permit or street excavation permit issued by the Public Works, and the Port, as applicable, for such work.

Without limiting any other rights that Permittee may have as the underlying fee owner of the Permit Area or pursuant to that certain Jurisdiction and Maintenance Memorandum of Understanding, among the Parties, dated for reference purposes as of March 5, 2024 (the “**Jurisdictional MOU**”), commencing on the Effective Date, Permittee shall be authorized to enter upon and use the PROW for the purpose of maintaining, repairing and replacing the Improvements within the Permit Area(s) subject to the terms, conditions, and restrictions set forth herein.

(c) The Director may require this Permit to be recorded in accordance with Sections 6.1 and 16.2.

### 4. MONITORING AND MAINTENANCE RESPONSIBILITIES

**4.1** The Permittee’s maintenance responsibility generally shall be limited to the Improvements in the Permit Area, and its immediate vicinity, including any sidewalk damage directly related to the Improvements or Permitted Activities. Permittee acknowledges its responsibility to maintain and monitor the Permit Area and its Improvements according to a “**Maintenance Monitoring and Reporting Program,**” document performance of the maintenance activities as described herein, and retain documentary evidence of the maintenance activities (the “**Maintenance Report**”) for a minimum of three (3) years. Within ten (10) days from the date of the Public Works Director’s written request for maintenance information, the Permittee shall provide proof that the maintenance activities have been performed.

If Port assigns the maintenance obligations herein to another person pursuant to Section 16.1 (the “**Maintenance Assignee**”), or assigns this Agreement, in whole or in part, to another person pursuant to Section 16.2 (the “**Non-Port Permittee**”) (collectively, “**Assignee**”), the Assignee shall: 1) on a regular quarterly basis, document the general condition of the entire Permit Area and all elements with date stamped digital images in JPEG format, or other video or picture imaging acceptable to the Public Works Director, and 2) maintain a written and image log of all non-routine maintenance issues, including, but not limited to: defects, damages, defacing, complaints, and repairs performed on Permit elements and the Permit Area. The regular monitoring images and/or video shall be taken from all angles necessary to show the entirety of

the Permit Area and all Improvements. The images for the logged maintenance issues and repairs shall clearly show the location and detail of the damaged or defaced element or area, and its repair and restoration. Permittee shall maintain all files and provide them in a format and media consistent with current standards for data retention and transfer, such as a USB flash drive with connective capability to a commonly available personal computer. In the event Port assigns only the maintenance responsibility to a Maintenance Assignee in accordance with Section 16.1, the Maintenance Assignee shall be responsible for compliance with this Section 4 and Port as Permittee will provide all records upon request of the Department, in accordance with City standard reporting processes. For any time period during which Port as Permittee has not assigned maintenance responsibility to a Maintenance Assignee, representatives from Port and Public Works shall meet and confer to determine a mutually agreeable documentation and reporting protocol.

The Maintenance Report, at a minimum, shall include the following information: date and time of maintenance; description and type of encroachment element requiring repair, resolution, or restoration and method used to repair, resolve, or restore it; time and duration to repair, resolve, or restore such element; company (and contact information for the company) that performed the repair, resolution, or restoration.

#### **4.2 Sidewalk Maintenance.**

Permittee acknowledges that, pursuant to Public Works Code Section 706, as amended from time to time (“**Section 706**”), the owner or long-term tenant, as applicable, of property fronting the sidewalks in the PROW (each a “**Fronting Property Owner**”) shall be responsible for sidewalk maintenance, exclusive of the Improvements subject to this Permit.

In accordance with Public Works Code Section 786, pursuant to Board of Supervisors Resolution No. [REDACTED], the Board of Supervisors authorized the Director of Public Works, subject to approval of the Port, to assign some or all of a Fronting Property Owner’s obligations under Section 706 to an agent or assignee such as an Owners’ Association. Where the Fronting Property Owner will no longer be responsible for the maintenance of sidewalks fronting its property, a new or modified Permit or Maintenance Agreement will be required, unless otherwise addressed by Section 706. Where the Port retains its maintenance responsibilities pursuant to Section 706, such maintenance may be undertaken by an assignee, as documented via a Notice of Assignment to a Maintenance Assignee pursuant to Section 16.1.

If it is unclear whether sidewalk maintenance is the responsibility of Permittee or the responsibility of a Fronting Property Owner, agent, assignee, or Owners’ Association who is not the Permittee under Public Works Code Section 706 or 786, the Department shall determine which party or parties are responsible. If the situation so warrants, the Department may assign responsibility for sidewalk maintenance to one or more parties.

### **5. CONDITIONS OF ENTRY AND USE**

By entering into this Agreement, Permittee acknowledges its responsibility to comply with all requirements for maintenance of the Improvements as specified in this Agreement, Public Works Code Section 786 et seq., Article 2.4 of the Public Works Code (“**Excavation in the Public Right-of-Way**”), and as directed by the Public Works Director. Permittee shall comply and cause its agents to comply, with each of the following requirements in its performance of the Permitted Activities.

## **5.1 Permits, Permissions, and Approvals**

### **5.1A Requirement to Obtain all Regulatory Permits and Approvals.**

Permittee and Master Developer shall obtain all permits, licenses, and approvals of applicable regulatory agencies (“**Regulatory Permits**”) required to commence and complete construction of the Improvements in the PROW and performance of the Permitted Activities, and that all such Regulatory Permits shall be delivered to the Department. Permittee recognizes and agrees that City’s approval of the Permit and this Agreement for purposes of performance of the Permitted Activities shall not be deemed to constitute the grant of any or all other Regulatory Permits needed for the Permitted Activities, and nothing herein shall limit Permittee’s obligation to obtain all such Regulatory Permits, at Permittee’s sole cost.

Permittee shall obtain from other parties any further permission necessary to perform its activities under the Permit and this Agreement arising due to any other existing rights affecting the PROW.

**5.1B Subsequent Excavation within Permit Area.** When maintenance of the Improvements requires excavation as described in Article 2.4 of the Public Works Code, or prevents public access through the Permit Area, or obstructs the movement of vehicles or bicycles where allowed by law, Permittee shall apply for applicable permits from the Department and any other affected City agencies. Permittee or agent of Permittee shall comply with all excavation permit bonding and security requirements that the Department deems necessary when performing or causing to be performed any excavations or occupancies within the Permit Area.

**5.1C Additional Approvals.** Further permission from the Department may be required prior to Permittee’s performance of work within the Permit Area including, but not limited to, the restoration of a temporarily restored trench, removal and replacement of a tree or other landscaping, or repair of damaged or uplifted sidewalk or other paving material. This Agreement does not limit, prevent, or restrict the Department from approving and issuing permits for the Permit Area including, but not limited to, occupancy, encroachment, and excavation permits. The Department shall include as a condition in all subsequent permits issued in the Permit Area that any subsequent permittee notify and coordinate with the Permittee prior to occupying, encroaching, or excavating within the Permit Area.

## **5.2 Exercise of Due Care**

During any entry on the Permit Area to perform any of the Permitted Activities, Permittee shall, at all times and at its sole cost, perform the Permitted Activities in a manner that maintains



the Permit Area in a good, clean, safe, secure, sanitary, and attractive condition. Permittee shall use due care at all times to avoid any damage or harm to the Permit Area or any Improvements or property located thereon or adjacent to, and to take such soil and resource conservation and protection measures within the Permit Area as are required by applicable laws and as City may reasonably request in writing, including but not limited to compliance with the Risk Management Plan for Pier 70 (Treadwell & Rollo, 7/25/13) as amended and as interpreted by regulatory agencies with jurisdiction. Permittee shall not perform any excavation work without City's, or Port's, if applicable, prior written approval. Under no circumstances shall Permittee knowingly or intentionally damage, harm, or take any rare, threatened, or endangered species on or about the Permit Area. While on the Permit Area to perform the Permitted Activities, Permittee shall use commercially reasonable efforts to prevent and suppress fires on and adjacent to the Permit Area attributable to such entry.

### **5.3 Cooperation with City Personnel and Agencies, and Fronting Property Owners**

Permittee shall work closely with City personnel to avoid unreasonable disruption (even if temporary) of access to the Improvements and property in, under, on or about the Permit Area and City and public uses of the Permit Area. Permittee shall perform work in accordance with the Permit and this Agreement. Permittee also shall perform work pursuant to one or more Street Improvement Permits or General Excavation Permits and in accordance with Public Improvement Agreements associated with each phase of development if either or both are applicable.

Permittee shall provide advance notice and work closely with Master Developer and each Fronting Property Owner of property fronting the applicable portion of the Permit Area on which Permitted Activities are occurring.

### **5.4 Permittee's Maintenance and Liability Responsibilities**

#### **5.4A Permittee's Maintenance and Liability.**

(a) Permittee acknowledges its maintenance and liability responsibility for the Improvements (including, but not limited to, materials, elements, fixtures, etc.) in accordance with the Permit and this Agreement, including all Attachments and Addenda, and all applicable City permits, ordinary wear and tear excepted. Permittee agrees to maintain said Improvements as constructed pursuant to the SIPs, as reasonably determined by the Public Works Director, and in accordance with any other applicable City permits or authorizations. Permittee shall reimburse the Department for any work performed by the Department as a result of the Permittee's failure to comply with the maintenance and restoration terms as specified in this Agreement under Section 9. Permittee is wholly responsible for any Improvements installed in the Permit Area that are subject to this Permit's terms and for the quality of the work performed in the Permit Area under this Agreement. Except as set forth in Sections 5.4A(b) and (c), Permittee is liable for all claims directly related to the Improvements and any condition caused by Permittee's performed work. Neither the issuance of any permit nor the inspection, nor the repair, nor the suggestion, nor the approval, nor the acquiescence of any person affiliated with the City shall excuse the Permittee from such responsibility or liability.

(b) The City acknowledges that while the Permittee retains the primary responsibility for all construction, installation, maintenance and repair activities, certain limited or supplemental maintenance and repair activities may be performed or financed by a Community Benefit District, Business Improvement District, Community Facilities District or similar Special Tax-Based Entity (the “**Special Tax Entity**”) rather than the Permittee. Special Tax Entity activities, if any, shall be set forth in an Attachment and added to this Agreement. Notwithstanding the foregoing, the Department shall hold the Permittee responsible for compliance with all provisions of the Permit and this Agreement without regard to whether the violation occurred through an act, omission, negligence, or willful misconduct of the Permittee or the Special Tax Entity. Only if Permittee can demonstrate to the satisfaction of the Public Works Director that the Special Tax Entity is solely responsible for the act, omission, negligence, or willful misconduct and the Public Works Director makes a written finding to this effect, shall the Public Works Director act directly against only the Special Tax Entity. Under such circumstances, the Permittee shall not be responsible and liable hereunder for the act, omission, negligence, or willful misconduct that the Public Works Director identifies in writing, and no Uncured Default (as hereinafter defined) shall be deemed by Public Works to have occurred by the Permittee, as a result of the Special Tax Entity’s acts, omissions, negligence or willful misconduct. In the event that the Special Tax Entity should cease to exist or that the Special Tax Entity’s maintenance and repair responsibilities are changed, then Permittee shall be responsible or assume responsibility for all activities that are no longer the responsibility of or being performed by the Special Tax Entity.

(c) In the event that the Public Works Director agrees to maintain one or more of the Improvements pursuant to Section 5.9B of this Agreement, Permittee shall not be responsible for the quality of maintenance or restoration work performed, nor liable for the resulting consequences of City work.

#### **5.4B Abatement of Unsafe, Hazardous, Damaged, or Blighted Conditions.**

Permittee acknowledges its maintenance responsibility to abate any unsafe, hazardous, damaged, or blighted conditions. Following receipt of a notice by the Department of an unsafe, damaged, or blighted condition, Permittee shall immediately respond to the notice and restore the site to the condition specified on the SIPs within thirty (30) calendar days, unless the Department specifies a shorter or longer compliance period based on the nature of the condition or the problems associated with it; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period or other period specified by the Department, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such restoration. In addition, Permittee acknowledges its responsibility to abate any hazardous conditions as a direct or indirect result of the Improvement (e.g., slip, trip, and fall hazards), promptly upon receipt of notice from the Department. For unsafe or hazardous conditions, the Permittee shall immediately place or cause to be placed temporary measures to protect the public. Failure to promptly respond to an unsafe or hazardous condition or to restore the site within the time specified in the Department’s notice may result in the Department’s performing the temporary repair or restoration in order to protect the public health, safety, and welfare. Permittee shall reimburse the Department for any such temporary repair or restoration. Failure to abate the problem also may result in the Department’s issuance of a Correction Notice, Notice of Violation, and/or request for reimbursement fees to the Department.

for departmental and other City services necessary to abate the condition in accordance with Section 9. Any temporary repair or restoration does not relieve Permittee of its obligation to maintain and restore the Improvements to the standards described in Section 5.4A.

**5.4C Permittee Contact Information, Signage.** Upon the Department's determination that the Permittee has completed the Improvements in accordance with the SIPs, Permittee shall post a sign(s) within the Permit Area, in conformity with any applicable signage program for the Permittee's property and in a location approved by the Department, that provides a telephone number and other Permittee contact information so that members of the public can contact the Permittee to report maintenance issues, problems, or any other complaints about the Permit.

**5.4D Custom Elements.** The Permittee has elected to install materials, facilities, fixtures, or features that do not meet the City's criteria for standard construction, operation, maintenance, and repair ("**Custom Elements**") and the City has approved such Custom Elements. The Permittee: (i) acknowledges its responsibility for the operation, maintenance, repair, and replacement of the Custom Elements as constructed per the SIPs, (ii) shall separately meter any service utility required to operate the Custom Elements, and (iii) shall be responsible for providing such utility service at Permittee's own cost. As an exception, if the Custom Elements are facilities such as street lights and they are installed in locations identified by the City as standard streetlight locations, the City may elect to power the streetlights and not require a separate meter. As between the City and Port, so long as Permittee is Port, Port is responsible for any claims related to Port's or its Maintenance Assignee's operation, maintenance, repair, and replacement of Custom Elements. If Port assigns maintenance responsibilities to a Maintenance Assignee or assigns this Agreement, in whole or in part, to a "Non-Port Permittee" pursuant to Section 16, Assignee shall indemnify and hold Port and City harmless against any claims related to Assignee's operation, maintenance, repair, and replacement of Custom Elements. This Section 5.4D does not apply to those custom streetlights accepted by SFPUC as a variant as they are not encroachments subject to this Permit.

## **5.5 [RESERVED]**

## **5.6 Annual Certification of Insurance**

Upon receipt of a written request by the Department, but no more than annually, any Assignee of the Port's responsibilities under this Permit shall submit written evidence to the Department indicating that the requirements of Section 8 (Insurance) and Section 10 (Maintenance Fund and Security) have been satisfied. So long as Port is Permittee, Port shall have no obligations under this Section 5.6.

## **5.7 Damage to and Cleanliness and Restoration of Permit Area and City Owned or Controlled Property**

Permittee, at all times, shall maintain the Improvements within the Permit Area in a clean and orderly manner to the reasonable satisfaction of the Public Works Director. Following any

construction activities or other activities on the Permit Area, Permittee shall remove all debris and any excess dirt from the Permit Area and Improvements.

If any portion of the Permit Area, any City-owned or controlled property located adjacent to the Permit Area, including other PROW or private property in the vicinity of the Permit Area, is damaged by any of the activities conducted by Permittee hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or affected property to its previous condition to the satisfaction of the Public Works Director.

## **5.8 Excavation or Temporary Encroachment within the Permit Area**

Permittee acknowledges its maintenance responsibility following any excavation or temporary encroachment of any portion or portions of the Permit Area as described below.

**5.8A Excavation by City or UCP Holders.** After providing public notice according to Article 2.4 of the Public Works Code, any City Agency or Public Utility may excavate within the PROW, which may include portions of the Permit Area. A “City Agency” shall include, but not be limited to, the SFPUC, SFMTA, and any City authorized contractor or agent, or their sub-contractor. “Public Utility” shall include any company or entity currently holding a valid Utility Conditions Permit (“UCP”) or a valid franchise with the City or the California Public Utilities Commission. Permittee acknowledges that it will provide and not obstruct access to any utilities and facilities owned and operated by any City Agency or a Public Utility at any time within the Permit Area for maintenance, repair, and/or replacement.

Emergency work. In the case of an emergency, a City Agency or Public Utility need not notify the Permittee of emergency work until after the emergency situation has been abated, at which point the Department will strive to cooperate with affected City departments to provide written notice to the Permittee concerning the emergency work.

In the performance of any excavation in the Permit Area by a City Agency or Public Utility, it shall be the responsibility of the Permittee to coordinate with the City Agency or Public Utility and restore the site to the condition specified on the SIPs, provided, however, the excavator shall implement commercially reasonable precautions to protect the Permit Area and any Improvements located within the Permit Area from injury or damage during the excavation or future work. Following excavation by a City Agency or a Public Utility, (a) in the case where there are Custom Elements, the excavator shall only be obligated to backfill and patch the site to a safe condition, unless Permittee requests the City Agency or Public Utility to restore the site to the City standard elected by Permittee, in which case, where feasible, the City Agency or Public Utility will restore the site to the City standard elected by Permittee; (b) in the case where there are only City standard materials, the excavator shall be obligated to backfill the site to a safe condition, and where feasible, restore the site to City standards. The City Agency or Public Utility shall not replace Custom Elements or Improvements that the City Agency or Public Utility may remove or damage in connection with such excavation or site access. Permittee shall be responsible and bear all costs for the restoration of all disturbed Custom Elements and the other Improvements that are not restored by a City Agency or Public Utility to the condition as specified on the SIPs.

In the case where the excavated portion of the Permit Area consists of only City standard materials, the City Agency or Public Utility shall complete its restoration work as prescribed in the Public Works Code Article 2.4 and supplemental Director's Orders, following the completion of the excavation or temporary encroachment.

In the case where the excavated portion of the Permit Area consists partially or fully of custom materials, the Permittee shall restore or cause to be restored the Improvements in the excavated portions of the Permit Area to the condition specified on the design for the Improvements within the duration of the permit, after the issuance of any permits required by the City; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within the permit duration, then the permittee shall submit a permit extension request as required under the Public Works Code, the Department shall extend such period provided that the Permittee has commenced and is diligently pursuing such restoration.

The Permittee shall not seek or pursue compensation from a City Agency or a Public Utility for Permittee's coordination of work or the inability to use the Permit Area for the duration of excavation or occupancy.

**5.8B Excavation by Private Parties.** Following any excavation of any portion or portions of the Permit Area by a private party (e.g., contractor, property owner, or resident), it shall be the responsibility of the private party and the Permittee to coordinate the restoration of the site and the private party shall bear all the cost of restoration; provided, however, that in all events the private party shall be required to restore the excavated portion or portions of the Permit Area to the condition specified on the SIPs within the duration of the excavation permit, after completion of the excavation or temporary encroachment, provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within the excavation permit duration, then the permittee shall submit a permit extension request as required under the Public Work Code, Department shall extend such period provided that the private party has commenced and is diligently pursuing such restoration. If the private party fails to perform such restoration, then the Permittee should notify the Department of such failure in writing and allow any Departmental corrective procedures to conclude prior to pursuing any and all claims against such private party related thereto should the Permittee have such third-party rights. The City, through its separate permit process with that private party, shall require that private party to bear all the costs of restoration and cooperate with the Permittee on how the restoration is performed and how any costs that the Permittee assumes for work performed (time and materials) are reimbursed. The Permittee shall only seek or pursue compensation from the private party for work performed (time and materials) and shall not seek or request compensation for coordination or the inability to use the Permit Area for the duration of excavation or occupancy, provided that Permittee is provided with access to Permittee's property. Nothing in this Section 5.8B modifies the obligations set forth in Section 5.4A.

**5.8C Temporary Encroachments for Entities Other Than Permittee.**

In the case of temporary encroachments, which may include the temporary occupancy of portions of the Permit Area or the temporary relocation of Improvements (elements or fixtures) from the Permit Area, Permittee shall work collaboratively with the entity that will be

temporarily encroaching the Permit Area (“**Temporary Encroacher**”) to coordinate the temporary removal and storage of the Improvements from the affected portion of the Permit Area, when necessary. It shall be the responsibility of the Temporary Encroacher to protect in-place any undisturbed portion of the Permit Area.

Where the Temporary Encroacher is a private party, the private party shall be responsible for any costs for removal, storage, and maintenance of the Improvements, and restoration associated with restoration of the Permit Areas. The obligation to coordinate and restore under this section shall be a condition of the City permit issued to the Temporary Encroacher. If the Temporary Encroacher fails to coordinate with Permittee and compensate the Permittee or restore the Permit Area, then the Permittee should notify the Department of such failure in writing.

The Permittee may only seek or pursue compensation from the Temporary Encroacher for costs incurred (time and materials) to temporarily relocate and replace Improvements, and shall not seek or request compensation for coordination or the inability to use the Permit Area for the duration of the Temporary Encroacher’s occupancy.

Where the Temporary Encroacher is a City Agency or a Public Utility, Permittee shall be responsible for any costs for removal, storage, maintenance, and restoration associated with the Improvements and any associated areas within the Permit Area, and the City Agency or Public Utility, as applicable, shall be responsible for restoration of any standard City features or Improvements. The City Agency or the Public Utility or its contractors shall not be responsible for Permittee’s temporary removal and storage costs.

The Permittee shall be responsible for ensuring the Permit Area has been restored within thirty (30) calendar days following the completion of the temporary encroachment; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such restoration.

#### **5.8D Additional Time to Complete Site Restoration Where Future Work Is Anticipated**

Prior to the Permittee’s undertaking of any restoration of the applicable portion of the Permit Area to the conditions specified in the Improvement Plans, the Permittee and the City shall confer as to whether any party (e.g., any City Agency, Public Utility, or private party) intends to perform any future work (e.g., any excavation or temporary encroachment) that would be likely to damage, disrupt, disturb or interfere with any restoration of the Permit Area. If such future work is anticipated within six (6) months following completion of any then proposed excavation or temporary encroachment, then the Permittee’s deadline for restoring the site shall be automatically extended. The Permittee may submit to the Department a written request for an extension to the restoration deadline if future work is anticipated to commence more than six (6) months from the completion of the prior excavation and temporary encroachment. Department may condition approval of such request on Permittee’s temporary repair to an adequate interim condition. If the restoration deadline is extended as set forth above, then the Permittee shall be obligated to complete the restoration within the timeframes specified in this Agreement.

## 5.9 Permit Revocation; Termination; Modification of Agreement

### 5.9A Permit Revocation or Termination

Permittee acknowledges and agrees that the obligations of the Permittee or Permittee's successor(s) in interest to perform the Permitted Activities shall continue for the term of the Permit. The City reserves the right to revoke the Permit under the procedures set forth in the Public Works Code Sections 786 et seq. and, if applicable, as specified in the Board of Supervisors' or the Public Works Director's approval of the Permit.

A termination or revocation of the Permit under the procedures set forth in Public Works Code Sections 786 et seq. shall result in an automatic termination of this Agreement as to the affected portion of the Permit Area, and all of Permittee's responsibilities and obligations hereunder shall terminate, unless otherwise provided for in this Agreement. The City may partially terminate or revoke the Permit as to those portions of the Permit Area subject to default and the City may elect to allow the Permit to remain effective as to all portions of the Permit Area that are not subject to default.

If the Permit is terminated by Permittee or revoked or terminated by City (each an **"IMEP Termination Event"**) with respect to a portion or portions of the Permit Area, Permittee shall convert the Improvements therein to a condition specified by City for a standard PROW or as the Public Works Director deems appropriate under the circumstances at Permittee's sole cost (the **"Right-of-Way Conversion"**) by (i) applying for, and providing the materials necessary to obtain, a street improvement permit or other authorization from City for the performance of such conversion work; (ii) performing such conversion work pursuant to the terms and conditions of such street improvement permit or other City authorization; and (iii) warranting that the conversion work will meet the standards required by a Public Works street improvement permit for a duration not less than one (1) year from the date Public Works confirms that the work is complete, subject to any extension that the Public Works Director may grant in the Public Works Director's discretion.

The obligation of Permittee or Permittee's successor in interest to remove the Improvements and restore the PROW to a condition satisfactory to the Public Works Director shall survive the revocation, expiration, or termination of this Permit. Upon completion of the Right-of-Way Conversion, and subject to Section 5.9B, Permittee shall have no further obligations under the Permit for the portion of the Permit Area subject to the completed Right-of-Way Conversion and to the extent the Public Works Director has agreed to terminate the Permittee's obligations in regard to all or a portion of the Right-of-Way Conversion, except as to any applicable warranty.

The City and any and all City subdivisions or agencies shall be released from any responsibility to maintain the existence of Improvements and shall not be required to preserve or maintain the Improvements in any capacity following the termination or revocation of the Permit unless the Department, in its discretion and in accordance with this Agreement, agrees to an alternative procedure.

### **5.9B Modification or Termination of the Agreement**

(a) Following the approval of the Notice of Annexation, and recordation in the Official Records if required pursuant to Section 6.1, this Agreement shall continue and remain in full force and effect at all times in perpetuity except if the City elects to terminate Permittee's maintenance obligations pursuant to this Section 5.9 and provides written notice to the address provided in Section 2.7. Under such circumstances, this Agreement shall terminate at the time specified in such written notice with exception to those terms as specified in this Agreement that apply to any remaining Permit obligations. If this Permit or the Notice of Annexation was recorded, City shall record evidence of any such termination in the Official Records.

(b) At any time during the term of the Permit, Permittee may request to amend the scope of such Permitted Activities or, subject to compliance with Section 5.9A, to decrease the Permit Area or scope of Improvements subject to the Permit, through a written amendment to this Agreement. The Public Works Director, in the Director's sole discretion, may approve, approve with conditions, or deny the requested amendment. If the Public Works Director approves an amendment, both Parties shall execute the approved amendment and arrange for its recordation, if it amends a recorded Permit or Notice of Annexation. Further, Permittee and Public Works Director may, but are not required to, execute a written modification of this Agreement to provide for the Department's maintenance of a portion or all of the Improvements as described in the Permit Area Documentation. In the event of such modification of this Agreement, the Department may require Permittee to pay the Department for the cost of maintaining specified Improvements as described in the Maintenance Plan (defined in Section 2.8). The Public Works Director's written modification shall, among other relevant terms, identify the specific portion of the Improvements that the Department shall maintain and the terms of Permittee's payments.

(c) In addition, Permittee and City may mutually elect to modify Permittee's obligation to perform the Right-of-Way Conversion described in Section 5.9.A including any modification necessary to address any Improvements that cannot be modified or replaced with a PROW improvement built according to the City's standard specifications. Any such modification may include, but not be limited to, Permittee's agreement to convert, at its sole cost, specified Improvements to a PROW improvement built according to the City's standard specifications while leaving other specified Improvements in their as-is condition, with Permittee assuming a continuing obligation to pay for City's costs to maintain and replace such remaining Improvements. In addition, any such modification may address any applicable City requirements for maintenance security payment obligations and City's acquisition of specialized equipment needed to perform the maintenance work, however, no such specialized equipment shall be required for Improvements built to City standards. If City and the Permittee mutually agree to any modification to the Right-of-Way Conversion that results in Permittee assuming such a maintenance payment obligation, Permittee shall execute and acknowledge, and City shall have the right to approve and to record in the Official Records of San Francisco County, an amendment to this Agreement, if recorded, that details such payment obligation.

### **5.10 Green Maintenance Requirements**

In performing any Permitted Activities that require cleaning materials or tools, Permittee, to the extent commercially reasonable, shall use cleaning materials or tools selected from the



Approved Alternatives List created by City under San Francisco Environmental Code, Chapter 2, or any other material or tool approved by the Public Works Director. Permittee shall properly dispose of such cleaning materials or tools.

## 6. ANNEXATION OF PROPERTY INTO SCOPE OF PERMIT

### 6.1 Annexation of Property and Improvements into Permit

The Permit Area may be expanded or new permit areas may be established according to this Section 6. New area containing Improvements (each area shall be referred to as an “**Annexation Area**”) may be annexed into the Permit or, as delegated by the Board of Supervisors, may constitute separate master encroachment permits or discrete street encroachment permits (each shall be identified as a “**Sub-Permit Area**”), as further described below, upon: i) approval by the Public Works Director according to the procedures set forth in this Section 6 and ii) the Department’s issuance of a Notice of Completion or Certificate of Conformity (or equivalent determination establishing that improvements are eligible for acceptance or have been completed according to the approved SIPs) for Improvements completed within the proposed Annexation Area.

(a) **Annexation Application Approval Process.** For each Annexation Area or Sub-Permit Area Permittee proposes for annexation into the Permit (“**Annexation Application**”), Permittee shall provide to the Department the materials described below concurrent with City’s approval of 100% Improvement Plans for the Permit Area. To be eligible for annexation into the Permit, the Annexation Area or Sub-Permit Area (including street segments and/or encroachment areas) must have been generally shown in the approved Global Diagram initially approved with this Permit.

(1) Annexation Application. Permittee must submit a complete Encroachment Permit application requesting the Public Works Director’s approval of the annexation of the Annexation Area into the Permit or approval of a master encroachment permit or street encroachment permit comprised of the Annexation Area as part of this Permit. The Annexation Application shall reference this Permit and include a plat illustrating the Permit Area and identifying the location of the Improvements to be annexed into the Permit or the Permit Area for which Permittee seeks a discrete master encroachment permit or street encroachment permit. The Annexation Application shall identify and describe any modifications to any Permit Area compared to the real property or Improvements shown in the approved Global Diagram. The Annexation Application shall identify the Permittee proposed to be responsible for the Annexation Area.

(2) Updated Global Diagram. Permittee must update the Global Diagram previously submitted to the Department to depict the Permit Area at the time of the submittal of the Annexation Application, including all administratively approved Annexation Areas and/or discrete master encroachment permits or street encroachment permits. Permittee must refine the Global Diagram, as needed, to include the type of Improvements and their approximate location within the Annexation Area. The updated Global Diagram shall also identify the Permittee for any previously approved Annexation Area.

(3) Updated Permit Area Documentation. Permittee shall submit updated or supplemental Permit Area Documentation showing all Improvements in the Annexation Area that is the subject of the Annexation Application (“**Precise Diagram**”).

(4) Phasing Plan. Permittee shall submit a diagram that shows all improvements in the Annexation Area, and generally shows Improvements that are located adjacent to the Permit Area.

(5) Updated Maintenance Plan (if applicable). Permittee shall submit to the Department a Maintenance Plan with each Annexation Application which shall contain a detailed description of means and methods to maintain the Improvements within the Permit Area that is the subject of the Annexation Application. If the Public Works Director approved any changes to the Maintenance Plan subsequent to the issuance of the Permit, Permittee shall include the updated Maintenance Matrix or other mutually acceptable document reflecting such change.

(6) Engineering and Improvement Plans and diagrams for the Permit Area.

(7) An estimate of annual maintenance cost for the Improvements associated with the Permit Area in the Annexation Application.

(8) O&M Manuals for the Improvements in the Annexation Area unless such materials were previously submitted in a full set of O&M Manuals that has been approved by the Department.

(9) Updated Maintenance Monitoring and Reporting Program (if applicable). If the Permittee proposes any changes to the Maintenance Monitoring and Reporting Program or if there are specific maintenance monitoring and reporting obligations exclusive to the Annexation Area, Permittee shall include the updated or specific Maintenance Monitoring and Reporting Program for Public Works to determine compliance with this Permit.

(10) A request for a separate master encroachment permit or discrete encroachment permit (a “**Sub-Permit**”) relating to a specific improvement or group of improvements associated with a fronting property that is owned or leased by a public entity, including but not limited to the Port and the Mayor’s Office of Housing and Community Development, (“**Publicly Owned Lot**”) and Improvements that serve multiple fronting properties (“**Shared Infrastructure**”). In addition to the items described in Sections 6.1(a)(1) - (9), a request for a Sub-Permit shall include a Precise Diagram (as defined above) depicting the improvements and proposed Annexation Area and associated fronting properties to be included within the Sub-Permit, as applicable.

(b) **Review of Annexation Application**. The Department shall review the Annexation Application according to the procedures and requirements of Public Works Code Sections 786 et seq., as provided herein. The Department shall provide the Permittee written notice indicating whether: (a) the Annexation Application is approved; (b) additional information is required to complete the application; and/or (c) in the Public Works Director’s reasonable discretion, the

Annexation Application proposes one or more entirely new or significantly modified encroachments (each a “**New Encroachments**”) that were not included as part of the Board of Supervisors approval of the Permit. In the event an Annexation Application involves a New Encroachment, the Annexation Application shall be deemed an application for a new master or major encroachment permit requiring approval by the Board of Supervisors pursuant to Public Works Code Section 786(b).

(c) **Approval and Recordation of Notice of Annexation.** Upon the Public Works Director’s approval of an Annexation Application and prior to or concurrently with the Board of Supervisor’s acceptance of the public improvements located within the Permit Area that is the subject of the Annexation Application, the Permittee shall obtain written approval of a “**Notice of Annexation**” by the Public Works Director and, if required in accordance with Section 16.2, record the Notice of Annexation. The Notice of Annexation shall describe the area and Improvements annexed into the Permit and identify the party(ies) responsible for the completed Improvements in the Permit Area. The Notice of Annexation shall include, and if recording is required in accordance with Section 16.2 shall be recorded with, the following documents: (1) Updated Global Diagram showing all the phases of work that have been annexed into the Permit, including the Permit Area; (2) a Precise Diagram; (3) a table identifying the Fronting Property Owner, encroachment permittee, or other party responsible for maintaining each category of Improvement in the Permit Area; and (4) a copy of the fully-executed Agreement with updated addenda and attachments, including the most current, updated versions of the documents set forth in Section 6.1(a). If required in accordance with Section 16.2, Permittee shall record the Notice of Annexation with all required and updated documents, as described herein, against each Fronting Property for the Permit Area identified in the Notice of Annexation or other such properties as may be agreed upon between Director and Permittee. Recordation of the Notice of Annexation shall not require the consent of any owner of property already subject to the Permit pursuant to a previously-recorded Notice of Annexation.

Upon approval and, if required in accordance with Section 16.2, recordation of the Notice of Annexation, the real property and Improvements identified therein shall become subject to the Permit, and the Permittee identified in the Notice of Annexation shall be subject to all terms and provisions set forth in this Agreement.

## 7. USE RESTRICTIONS

Permittee agrees that the following uses of the PROW by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below. The list of prohibited uses includes, but is not limited to, the following uses.

### 7.1 Proposed Alterations

Other than the approved Improvements, Permittee shall not make, construct, or place any temporary or permanent alterations, installations, additions, or improvements on the PROW, structural or otherwise, nor alter any existing structures or improvements on the PROW (each, a “**Proposed Alteration**”), without the Public Works Director’s prior written consent in each

instance. The in-kind replacement or repair of existing Improvements shall not be deemed a Proposed Alteration.

Permittee may request approval of a Proposed Alteration. The Public Works Director shall have a period of thirty (30) days from receipt of request for approval of a Proposed Alteration to review and approve or deny such request for approval. Should the Public Works Director fail to respond to such request within said thirty (30) day period, Permittee's Proposed Alteration shall be deemed disapproved; provided that Permittee may re-submit its request for approval until it is approved by the Public Works Director. In requesting the Public Works Director's approval of a Proposed Alteration, Permittee acknowledges that the Public Works Director's approval of such Proposed Alteration may be conditioned on Permittee's compliance with specific installation requirements and Permittee's performance of specific on-going maintenance thereof or of other affected PROW. If Permittee does not agree with the Public Works Director's installation or maintenance requirements for any Proposed Alteration, Permittee shall not perform the Proposed Alteration. If Permittee agrees with the Public Works Director's installation or maintenance requirements for any Proposed Alteration, prior to Permittee's commencement of such Proposed Alteration, Permittee and the Public Works Director shall enter into a written amendment to this Agreement that modifies the Permitted Activities to include such requirements. Prior approval from the Public Works Director shall not be required for any repairs made pursuant to and in accordance with the Permitted Activities.

If Permittee performs any City-approved Proposed Alteration, Permittee shall comply with all of the applicable terms and conditions of this Agreement, including, but not limited to, any and all conditions of approval of the Proposed Alteration(s).

Permittee shall obtain all necessary permits and authorizations from the Department and other regulatory agencies prior to commencing work for the Proposed Alteration. The Public Works Director's decision regarding a Proposed Alteration shall be final and not appealable.

## **7.2 Dumping**

Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under, or about the PROW.

## **7.3 Hazardous Material**

(a) **Assignee.** Assignee shall not cause, nor shall Assignee allow any of its agents to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the PROW, or unless in accordance with environmental laws, transported to or from the PROW. Assignee shall immediately notify City if Assignee learns or has reason to believe that a release of Hazardous Material has occurred in, on, or about the PROW. In the event Assignee or its agents cause a release of Hazardous Material in, on, or about the PROW, Assignee shall, without cost to City and in accordance with all laws and regulations, (i) comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination, and (ii) return the PROW to a condition which complies with applicable law. In

connection therewith, Assignee shall afford Port and City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the PROW or are naturally occurring substances in the PROW, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the PROW. The Parties hereby acknowledge that customary use of cleaning solutions, oil, gas, and similar products that would typically be used to perform the Permitted Activities shall not be considered a hazardous materials pursuant to this Section 7.3 if such products are approved in advance by the Director and used in compliance with all applicable laws.

Notwithstanding anything herein to the contrary, if the Public Works Director determines that neither Assignee nor its agents caused the release or threatened release of the Hazardous Material, Assignee shall have no liability whatsoever (including, without limitation, the costs of any investigation, any required or necessary repair, replacement, remediation, cleanup or detoxification, or preparation and implementation of any closure, monitoring, or other required plans) with respect to any release or threatened release of any Hazardous Material on, in, under or about the PROW. If the Public Works Director finds that neither Assignee nor its agents were the source of and did not cause the release of the Hazardous Material, Assignee shall not be listed or identified as the generator or responsible party of any waste required to be removed from the PROW, and will not sign any manifests or similar environmental documentation, with respect to any Environmental Condition (as hereinafter defined). "Environmental Condition" shall mean any adverse condition relating to the release or discharge of any Hazardous Materials on, in, under, or about the PROW by any party other than Assignee or its agents.

(b) **Port as Permittee.** So long as Port is Permittee, Port shall Handle all Hazardous Materials introduced or disturbed in the Permit Area in compliance with all Environmental Laws. Port shall not be responsible for the safe Handling of Hazardous Materials released on the Permit Area solely by City or its agents, except to the extent Port disturbs or exacerbates such Hazardous Materials. Prior to termination of this Agreement, Port shall remove any and all Hazardous Materials introduced or released in, on, under or about Permit Area by Port or its agents during the term of this Agreement and shall remediate or dispose of any Hazardous Materials produced as a result of their activities within the Permit Area, to the extent consistent with Port's standard practices and required by applicable laws. All costs of storage, shipping and disposal of extracted soils and groundwater from the Permit Area shall be the responsibility of Port including, without

limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests. For purposes of this Section 7.3(b), “Environmental Laws” means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge, or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Permit Area, including, without limitation, soil, air, bay water, and groundwater conditions; “Handle” means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material, “Handling” has a correlative meaning.

#### **7.4 Nuisances**

Permittee shall not conduct any activities on or about the PROW that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or to the public. The Parties hereby acknowledge that customary use of landscaping and similar equipment (such as lawn mowers, clippers, hedge trimmers, leaf blowers, etc.) that would typically be used to perform the Permitted Activities shall not be considered a nuisance under this Section 7.4 if such equipment is used in compliance with all applicable laws.

#### **7.5 Damage**

Permittee shall use due care at all times to avoid causing damage to any of the PROW or any of City’s property, fixtures, or encroachments thereon. If any of the Permitted Activities or Permittee’s other activities at the PROW causes such damage, Permittee shall notify City, and, if directed by City, restore such damaged property or PROW to the condition it was in prior to the commencement of such Permittee activity to the Public Works Director’s satisfaction; or, if the City chooses to restore the damaged property, Permittee shall reimburse City for its costs of restoration.

### **8. INSURANCE**

**8.1** As described below, Non-Port Permittee or Maintenance Assignee, as applicable (the “**Insured Party**”), shall keep insurance in effect at all times during the term of this Agreement, at the Insured Party’s own expense, as applicable, and cause its contractors and subcontractors to maintain insurance at all times, during the Insured Party’s or its contractors performance of any of the Permitted Activities on the PROW. If the Insured Party fails to maintain the insurance in active status, such failure shall be a Permit default subject to the Department’s, or Port’s as to a Maintenance Assignee, enforcement remedies. The insurance policy shall be maintained and updated annually to comply with the Department’s applicable requirements. The following Sections represent the minimum insurance standard as of the Effective Date of this Permit.

**8.1A** An insurance policy or insurance policies issued by insurers with ratings comparable to A-VIII, or higher that are authorized to do business in the State of California, and that are satisfactory to the City. Approval of the insurance by City shall not relieve or decrease the Insured Party’s liability hereunder;

**8.1B** Commercial General Liability Insurance written on an Insurance Services Office (ISO) Coverage form CG 00 01 or another form providing equivalent coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage, including coverages for contractual liability, personal injury, products and completed operations, independent permittees, and broad form property damage;

**8.1C** Commercial Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired automobiles, as applicable for any vehicles brought onto PROW; and

**8.1D** Workers' Compensation Insurance, in statutory amounts, with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

**8.2** All liability policies required hereunder shall provide for the following: (i) name as additional insured the City and County of San Francisco and the San Francisco Port Commission and their officers, directors, commissioners, agents, and employees, jointly and severally; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement; and (iii) except pursuant to Section 8.11 below, stipulate that no other insurance policy of the City and County of San Francisco or the San Francisco Port Commission will be called on to contribute to a loss covered hereunder.

**8.3** Limits may be provided through a combination of primary and excess insurance policies. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

**8.4** All insurance policies shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal or material reduction in coverage, or depletion of insurance limits, except for ten (10) days' notice for cancellation due to non-payment of premium, to the Insured Party, Port, and City. The Insured Party shall provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to Department within one business day of the Insured Party's receipt. The Insured Party also shall take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced or depleted coverage, or obtain the full coverage required by this Section from a different insurer meeting the qualifications of this Section. Notices shall be sent to the Department of Public Works, Bureau of Street Use and Mapping, 1155 Market Street, 3rd Floor, San Francisco, CA, 94103, or any future address for the Bureau of Street Use and Mapping. The permission granted by the Permit shall be suspended upon the termination of such insurance. Upon such suspension, the Department and the Insured Party

shall meet and confer to determine the most appropriate way to address the Permit. If the Department and the Insured Party cannot resolve the matter, the Insured Party shall restore the PROW to a condition acceptable to the Department without expense to the Department. As used in this Section, "Personal Injuries" shall include wrongful death.

**8.5** Prior to the Effective Date, the Insured Party shall deliver to the Department certificates of insurance and additional insured policy endorsements from insurers in a form reasonably satisfactory to Department, evidencing the coverages required hereunder. The Insured Party shall furnish complete copies of the policies upon written request from City's Risk Manager. In the event the Insured Party shall fail to procure such insurance, or to deliver such certificates or policies (following written request), Department shall provide notice to the Insured Party of such failure and if the Insured Party has not procured such insurance or delivered such certificates within five (5) days following such notice, City may initiate proceedings to revoke the permit and require restoration of the PROW to a condition that the Public Works Director deems appropriate.

**8.6** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

**8.7** Should any of the required insurance be provided under a claims-made form, the Insured Party shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should any occurrences during the term of this Agreement give rise to claims made after expiration of this Agreement, such claims shall be covered by such claims-made policies.

**8.8** Upon City's request, the Insured Party and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by the Insured Party for risks comparable to those associated with the PROW, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by the Insured Party hereunder to conform to such general commercial practice.

**8.9** The Insured Party's compliance with the provisions of this Section shall in no way relieve or decrease the Insured Party's indemnification obligations under this Agreement or any of the Insured Party's other obligations hereunder. The Insured Party shall be responsible, at its expense, for separately insuring the Insured Party's personal property.

**8.10** As between the City and Port, so long as Permittee is Port, the provisions of Section 25.2 will apply.

**8.11** These requirements may be satisfied by Assignee obtaining insurance coverage required by Port that names as additional insured the City and County of San Francisco and its officers, directors, commissioners, agents, and employees, jointly and severally. In the event of a conflict between the insurance coverage provided hereunder and the insurance coverage provided



pursuant to agreement with the Port, the insurance coverage providing the greatest coverage to the City and Port shall apply.

## **9. VIOLATIONS; CITY ENFORCEMENT OF PERMIT AND AGREEMENT; SECURITY DEPOSIT**

Permittee acknowledges that the Department may pursue the remedies described in this Section against Permittee and/or any Assignee, as applicable, in order to address a default by Permittee and/or Assignee of any obligation under this Permit with respect to any Permit Area for which Permittee and/or Assignee is responsible, including pursuant to the relevant Notice of Assignment, if applicable. In addition to the procedures below and as set forth in Section 5.4B, if Permittee fails to promptly respond to an unsafe or hazardous condition or to restore the site within the time the Department specifies, the Department may perform the temporary repair or restoration in order to protect the public health, safety, and welfare. Permittee shall reimburse the Department for any such temporary repair or restoration.

(a) **Correction Notice (CN).** The Department may issue a written notice informing Permittee that there is an unsafe, hazardous, damaged, or blighted condition within the Permit Area, or stating that the Permittee has otherwise failed to maintain the Permit Area as required by this Permit (“**Correction Notice**”). The Correction Notice shall identify the issue, deficiency, or maintenance obligation that is the subject of the notice with reasonable particularity and specify the time for correction, which shall be no less than thirty (30) days; provided, however, to the extent that such correction cannot be completed using reasonable efforts within the initially specified timeframe, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such correction. In the event of an emergency or other situation presenting a threat to public health, safety, or welfare, the Public Works Director may require correction in less than thirty (30) days.

### **(b) Notice of Violation (NOV).**

(i) The Department may issue a written notice of violation to the Permittee for failure to maintain the Permit Area and creating an unsafe, hazardous, damaged, or blighted condition within the Permit Area, failure to comply with the terms of this Agreement, or failure to respond to the Correction Notice by abating the identified condition(s) within the time specified therein. The NOV shall identify each violation and any fines imposed per applicable code(s) or Agreement sections and specify the timeframe in which to cure the violation and pay the referenced fines (“**Notice of Violation**” or “**NOV**”), which shall be within thirty (30) days if not specified. Department will also send a courtesy copy of the Notice of Violation to the Port whether or not Port is Permittee or Fronting Property Owner.

(ii) Permittee shall have thirty (30) days to submit to the Department, addressed to the Public Works Director, via BSM Inspection Manager at 1155 Market St, 3rd Floor, San Francisco, CA 94103, or future Bureau address, a written appeal to the NOV or a written request for administrative review of specific items in the NOV. If Permittee submits said appeal or request for review, the Public Works Director shall hold a public hearing on the dispute in front of an administrative hearing officer. The Public Works Director shall then issue a final written decision on the Director’s determination to approve, conditionally

approve, modify, or deny the appeal based on the recommendation of the hearing officer and the information presented at the time of the hearing.

(c) **Uncured Default.** If the violation described in the Notice of Violation is not cured within ten (10) days after the latter of (1) the expiration of the Notice of Violation appeal period or (2) if an appeal is filed, the written decision by the Public Works Director following the hearing to uphold the Notice of Violation or sections thereof, said violation shall be deemed an “**Uncured Default.**” In the event of an Uncured Default, the Public Works Director may undertake either or both of the following:

(i) Cure the Uncured Default and issue a written demand to Permittee to pay the City’s actual reasonable costs to remedy said default in addition to any fines or penalties described in the Notice of Violation within ten (10) days (each such notice shall be referred to as a “**Payment Demand**”).

(ii) Solely as to Non-Port Permittees, notify Non-Port Permittee that it must submit a Security Deposit (as defined in Section 9(d)) for the maintenance obligation that is the subject of the Notice of Violation. Alternatively, the Public Works Director may initiate the procedures under Public Works Code Section 786 to revoke the Permit with respect to the particular portion of the Permit Area that is the subject of the Notice of Violation and require a Right-of-Way Conversion (as defined in Section 5.9A) with respect to that area, in the Public Works Director’s discretion.

**(d) Security Deposit Required for Uncured Default**

If there is an Uncured Default as defined in Section 9(c) of this Agreement, then within thirty (30) business days of the Public Works Director’s request, Non-Port Permittee shall deposit with the Department via the Permit Manager of the Bureau of Street Use and Mapping (or successor Bureau) the sum of no less than twice the annual cost of maintenance as set forth in the Maintenance Plan on file with the Public Works Director (the “**Security Deposit**”) with respect to the maintenance obligation that is the subject of the Uncured Default, to secure Non-Port Permittee’s faithful performance of all terms and conditions of this Agreement, including, without limitation, its obligation to maintain the PROW in the condition that the Public Works Director deems acceptable. When Non-Port Permittee delivers the Security Deposit to the Department pursuant to the foregoing sentence, the Department shall have the right to require Non-Port Permittee to proportionately increase the amount of the Security Deposit by an amount that reflects the increase in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics (“**Index**”) published most immediately preceding the date the amount of the Security Deposit was established and the Index published most immediately preceding the date the Department delivers written notice of the increase in the Security Deposit. The amount of the Security Deposit shall not limit Non-Port Permittee’s obligations under this Agreement.

Non-Port Permittee agrees that the Department may, but shall not be required to, apply the Security Deposit in whole or in part to remedy any damage to the PROW caused by Non-Port Permittee, its agents, or the general public using the Permit Area to the extent that the Public Works

Director required Non-Port Permittee to perform such remediation under this Agreement and Non-Port Permittee failed to do so, or Non-Port Permittee failed to perform any other terms, covenants, or conditions contained herein (including, but not limited to, the payment of any sum due to the Department hereunder either before or after a default). Notwithstanding the preceding, the Department does not waive any of the Department's other rights and remedies hereunder or at law or in equity against the Non-Port Permittee should the Department use all or a portion of the Security Deposit. Upon termination of the Permitted Activities after an IMEP Termination Event as described herein, the Department shall return any unapplied portion of the Security Deposit to Non-Port Permittee, less any administrative processing cost.

Should the Department use any portion of the Security Deposit to cure any Uncured Default, Non-Port Permittee shall replenish the Security Deposit to the original amount within ten (10) days of the date of a written demand from the Department for reimbursement of the Security Deposit. Subject to the following sentence, the Non-Port Permittee's obligation to replenish the Security Deposit shall continue for two (2) years from the date of the initial payment of the Security Deposit unless the Public Works Director, in the Director's sole discretion, agrees to a shorter period; provided, however, that if the Public Works Director does not issue a new Notice of Violation related to the issues triggering an IMEP Termination Event for a period of one year from the date of the initial payment of the Security Deposit, then, upon Non-Port Permittee's written request, the Public Works Director shall submit a check request to City's Controller's Office to have any remaining Security Deposit, less any administrative processing cost, delivered to Non-Port Permittee. The Department's obligations with respect to the Security Deposit are solely that of debtor and not trustee. The Department shall not be required to keep the Security Deposit separate from its general funds, and Non-Port Permittee shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Non-Port Permittee under any provision of the Permit or this Agreement. Upon termination of the Permitted Activities after an IMEP Termination Event, the Department shall return any unapplied portion of the Security Deposit to Non-Port Permittee, less any administrative processing cost.

So long as Port is Permittee, Port shall have no obligations under this Section 9(d).

(e) **Demand for Uncured Default Costs.** Where the Permittee or the Non-Port Permittee has failed to timely (A) remit the funds described in a Payment Demand, (B) remit the Security Deposit (solely as to the Non-Port Permittee), or (C) pay the City's costs associated with the City's performance of a Right-of-Way Conversion (collectively, "**Uncured Default Costs**"), the Public Works Director may initiate lien proceedings against the Fronting Property Owner where Fronting Property Owner is the Non-Port Permittee for the subject Improvements, or against the Owners' Association's members property(ies) where the Owners' Association is the Non-Port Permittee for the subject Improvements for the amount of the Uncured Default Costs pursuant to Public Works Code Sections 706.4 through 706.7, Public Works Code Section 706.9, Administrative Code Section 80.8(d), or any other remedy in equity or at law. The Public Works Director may not initiate lien proceedings against Port's fee interest in the Property, if applicable.

## 10. MAINTENANCE FUND AND SECURITY

### 10.1 Maintenance Fund

The Public Works Director may require a Maintenance Fund as a condition of assignment of this Permit, in whole or in part, to a Non-Port Permittee pursuant to Section 16.2. A Maintenance Fund, if required, shall be held by the Department.

For example, during any portion of the term of this Agreement that special taxes for maintenance of Improvements on Publicly Owned Lots and Shared Infrastructure (described in Section 6.1(a)(10)) (or their equivalent) are not being collected in the Special Tax District, the Public Works Director may require Assignee to establish and fund, following the Notice of Annexation for such Improvements, a “**Maintenance Fund**” in an amount of no less than twice the annual cost of maintenance as set forth in the Maintenance Plan for such Improvements.

If an Assignee fails to respond to a Correction Notice or Notice of Violation described above, the City may draw down upon the Maintenance Fund in the same manner that it would use a Security Deposit for an Uncured Default associated with Improvements on Privately Owned Lots.

Notwithstanding the foregoing, Public works in consultation with the Port may allow satisfaction of a Maintenance Fund requirement through posting of security or a maintenance reserve, such as a larger reserve held by Assignee for maintenance of open space and streets in the Global Area.

## 11. COMPLIANCE WITH LAWS

Permittee shall, at its expense, conduct and cause to be conducted all activities under its control on the PROW allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the Parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the PROW any and all business and other licenses or approvals necessary to conduct the Permitted Activities. Nothing herein shall limit in any way Permittee’s obligation to obtain any required regulatory approvals from City departments, boards, or commissions or other governmental regulatory authorities or limit in any way City’s exercise of its police powers. At the Public Works Director’s written request, Permittee shall deliver written evidence of any such regulatory approvals Permittee is required to obtain for any of the Permitted Activities.

## 12. SIGNS

Permittee shall not place, erect, or maintain any sign, advertisement, banner, or similar object on or about the PROW without the Public Works Director’s written prior consent, which the Public Works Director may give or withhold in its sole discretion; provided, however, that Permittee may install any temporary sign that is reasonably necessary to protect public health or safety during the performance of a Permitted Activity. This Section shall not be applicable to any signs approved by the City under the master signage plan or master streetscape plan for the Project (the “**Pier 70 Streetscape Master Plan**”), or required by any other Regulatory Agency (e.g. San Francisco Bay Conservation and Development Commission, in connection with designation of Pier 70 as the Historic Union Ironworks District).

### **13. UTILITIES**

The Permittee shall be responsible for locating and protecting in place all above and below grade utilities from damage, when Permittee, or its authorized agent, elects to perform any work in, on, or adjacent to the Permit Area. If necessary prior to or during the Permittee's execution of any work, including Permitted Activities, a utility requires temporary or permanent relocation, the Permittee shall obtain written approval from the utility owner and shall arrange and pay for all costs for relocation. If Permittee damages any utility during execution of its work, the Permittee shall notify the utility owner and arrange and pay for all costs for repair. Permittee shall be solely responsible for arranging and paying directly to the City or utility company for any utilities or services necessary for its activities hereunder.

Permittee shall be responsible for installing, maintaining, and paying for utility services necessary to support any Improvements, such as light fixtures, water fountains, storm drains, etc. in the Permit Area that are included in the Permit.

### **14. NO COSTS TO CITY; NO LIENS**

Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the PROW pursuant to this Agreement, and shall keep the PROW free and clear of any liens or claims of lien arising out of or in any way connected with its use of the PROW pursuant to this Agreement.

### **15. "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION OF PROW; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS**

Permittee acknowledges and agrees that Permittee, or its agents, has installed or shall install the Improvements contemplated in the permit application for the Improvements and has full knowledge of the condition of the Improvements and the physical condition of the PROW. Permittee agrees to use the PROW in its "AS IS, WHERE IS, WITH ALL FAULTS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, including, without limitation, the suitability, safety, or duration of availability of the PROW or any facilities on the PROW for Permittee's performance of the Permitted Activities. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules, and ordinances governing the use of the PROW, and to any and all covenants, conditions, restrictions, encroachments, occupancy, permits, and other matters affecting the PROW, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the PROW and all matters relating to its use of the PROW hereunder, including, without limitation, the suitability of the PROW for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the PROW in the manner contemplated hereby.

Under California Civil Code Section 1938, to the extent applicable to this Agreement, Permittee is hereby advised that the PROW has not undergone inspection by a Certified Access Specialist (“CAS”) to determine whether it meets all applicable construction-related accessibility requirements.

## **16. ASSIGNMENT OF MAINTENANCE OBLIGATIONS; ASSIGNMENT OF AGREEMENT; PERMIT BINDING UPON SUCCESSORS AND ASSIGNEES; NOTICE OF ASSIGNMENT**

### **16.1 Assignment of Maintenance Obligations; Notice of Assignment**

Subject to the approval of the Public Works Director and any conditions the Public Works Director deems appropriate, Permittee, with prior written approval of Port Commission and Board of Supervisors, to the extent required under the Administrative Code or Charter, may assign the maintenance obligations with respect to all or any portion of the Permit Area or Improvements therein. The assignment may be made to a homeowners’ association (for residential or mixed-use properties), a commercial owners’ master association (for commercial properties), a master association with jurisdiction over the Fronting Property, or a management entity created for purposes of managing public realm improvements within the Pier 70 area (each, a “**Maintenance Assignee**”) by submitting a “**Notice of Assignment of Maintenance Obligations**” to the Department. Assignments of this Permit to an entity other than a permitted Maintenance Assignee shall be subject to Section 16.2 of this Agreement. The Parties anticipate that the initial Maintenance Assignee will be the Master Developer, as documented pursuant to that second amendment to DDA by and between Port and the Master Developer (the “**Second Amendment**”). Upon submittal of a Notice of Assignment in substantial conformance with **Attachment 5** attached hereto to Public Works and the Public Works Director’s written approval, the Permit rights and obligations may be performed by the Maintenance Assignee with respect to the Permit Area described therein. Following such assignment to a Maintenance Assignee, Port and Maintenance Assignee shall be jointly and severally liable for the obligations of this Permit.

The **Notice of Assignment of Maintenance Obligations** shall include:

- (1) identification of the Assignee and an acknowledgment of acceptance of the assignment;
- (2) the contact person for the Assignee and the contact information as required under Section 2.7;
- (3) a description of the Permit Area and Improvements located therein, by reference to the previously-approved Notice of Annexation that is being assigned;
- (4) a statement of whether Public Works Code § 706 obligations are assigned;
- (5) a copy of recorded CC&Rs, if there are such CC&Rs, evidencing (A) the Owners’ Association’s obligation to accept maintenance responsibility for the subject Improvements consistent with this Agreement upon assignment; (B) City’s right to enforce maintenance obligations as a third-party beneficiary under such CC&Rs and the San

Francisco Municipal Code; and (C) City's right to record this Permit against Owners' Association's members' property.

(6) a statement of whether Community Facilities District or other Special Tax District funds will be used to fund maintenance obligations;

(7) a confirmation by the Assignee that it will fund the Maintenance Fund and/or provide security, if required pursuant to Section 10 above;

(8) evidence of insurance meeting the requirements Section 8 above or the insurance requirements pursuant to applicable agreements with Port, whichever provision(s) or portion(s) thereof provides broader coverage for City;

(9) a confirmation by the assignee that it will indemnify City consistent with the requirements of Section 25 above or the indemnity requirements pursuant to applicable agreements with Port, whichever provision(s) or portion(s) thereof provides broader indemnity for City;

(10) a confirmation by the Assignee that it will comply with any conditions imposed by the Public Works Director in approving the assignment; and

(11) acknowledgment that Maintenance Assignee and Permittee are jointly and severally liable for the obligations under this Permit.

## 16.2 ASSIGNMENT OF AGREEMENT

This Agreement shall be the obligation of Permittee, and, except as to maintenance obligations as provided for in Section 16.1, may not be assigned, conveyed, or otherwise transferred to any other party, including an Owners' Association established for the benefit of the Permittee, unless approved in writing by the Port Commission and Public Works Director. This Agreement shall bind Permittee, its successors and assignees with each successor or assignee being deemed to have assumed the obligations under this Agreement at the time of such acquisition of fee ownership or assignment. It is intended that this Agreement binds the Permittee and all future fee owners and/or Ground Lessees of all or any of the Fronting Property only during their respective successive periods of ownership; and therefore, the rights and obligations of any Permittee or its respective successors and assignees under this Agreement shall terminate upon transfer, expiration, or termination of its interest in the Fronting Property, except that its liability for any violations of the requirements or restrictions of this Agreement, or any acts or omissions during such ownership, shall survive any transfer, expiration, or termination of its interest in the Fronting Property.

Subject to the approval of the Public Works Director and any conditions the Public Works Director deems appropriate, Permittee may assign this permit to a homeowners' association (for residential or mixed-use properties), a commercial owners' association (for commercial properties) or a master association with jurisdiction over the Fronting Property by submitting a "**Notice of Assignment**" to the Department, in the form attached hereto as **Attachment 5**. Upon submittal of a Notice of Assignment in substantial conformance with **Attachment 5** attached hereto to Public

Works and the Public Works Director's written approval, the Permit rights and obligations may be performed by the Non-Port Permittee with respect to the Permit Area described therein.

**Recording.** If the Non-Port Permittee is an Owners' Association, the Public Works Director may record the Permit against the Owners' Association's members' property. If the Non-Port Permittee is a Fronting Property Owner, the Public Works Director may record the Permit against the Fronting Property Owner's property. For all other Non-Port Permittees, the Public Works Director may record the Permit against the Non-Port Permittee's real property interest, if any, in the Project Area, or require a Maintenance Fund in accordance with Section 10.

The **Notice of Assignment** shall include the information identified in Section 16.1 (1) through (10) above.

Following such assignment, the obligations of the assigning Permittee shall be deemed released to the extent of the assignment, and the assigning Permittee shall have no obligations under this Agreement as to the assigned portion of the Agreement.

## **17. TRANSFER AND ACCEPTANCE PROCEDURES**

If this Permit is assigned in accordance with the provisions of Section 16.2 to one or more Non-Port Permittee Fronting Property Owners, this Permit and the accompanying benefits and obligations are automatically transferred to any successor Fronting Property Owner(s). If the Non-Port Permittee is selling the property or leasing the property pursuant to a Ground Lease, the successor owner(s)/Ground Lessee, as applicable, shall submit contact information to the Department immediately upon closing on the property sale or Ground Lease, as applicable, along with an acknowledgement that the successor owner(s) or tenant(s), as applicable, shall accept and assume all Permit responsibilities. The Department may require that such a transfer be evidenced by a new written Agreement with the Public Works Director and require evidence of the requisite insurance to be submitted within a specified period of time.

## **18. POSSESSORY INTEREST TAXES**

Non-Port Permittee recognizes and understands that this Agreement may create a possessory interest subject to property taxation with respect to privately-owned or occupied property in the PROW, and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Non-Port Permittee agrees to pay taxes of any kind, including any possessory interest tax, if any, that may be lawfully assessed on Non-Port Permittee's interest under this Agreement or use of the PROW pursuant hereto and to pay any other taxes, excises, licenses, permit charges, or assessments based on Non-Port Permittee's usage of the PROW that may be imposed upon Non-Port Permittee by applicable law (collectively, a "Possessory Interest Tax"). Non-Port Permittee shall pay all of such charges when they become due and payable and before delinquency. The Parties hereto hereby acknowledge that the PROW will be a public open space during the term of this Agreement and Permittee's use of the PROW pursuant to this Agreement is intended to be non-exclusive and non-possessory. Property owned and controlled by Port and not subject to a lease is not subject to property taxation.



## **19. PESTICIDE PROHIBITION**

Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the “Pesticide Ordinance”) which (a) prohibit the use of certain pesticides on PROW, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Permittee to submit to the Public Works Director an integrated pest management (“IPM”) plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the PROW during the term of this Agreement, (ii) describes the steps Permittee will take to meet the City’s IPM Policy described in Section 300 of the Pesticide Ordinance, and (iii) identifies, by name, title, address and telephone number, an individual to act as the Permittee’s primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Permittee, through the Public Works Director, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 303 thereof.

## **20. PROHIBITION OF TOBACCO SALES AND ADVERTISING**

Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the PROW. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Permittee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the PROW and such prohibition must be included in all subleases or other agreements allowing use of the PROW. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

## **21. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING**

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the PROW. For purposes of this Section, “alcoholic beverage” shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to (a) communicate the health hazards of alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

## **22. CONFLICTS OF INTEREST**

Through its execution of this Agreement, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City’s

Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts related to this Agreement which would constitute a violation of said provisions, and agrees that if Permittee becomes aware of any such fact during the term of this Agreement, Permittee shall immediately notify the City.

### **23. FOOD SERVICE WASTE REDUCTION**

If there is a City permit or authorization for the Permit Area that will allow food service, Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein and the Permittee will be treated as a lessee for purposes of compliance with Chapter 16. This provision is a material term of this Agreement. By entering into this Agreement, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather as mutually agreed upon monetary damages sustained by City because of Permittee's failure to comply with this provision.

### **24. GENERAL PROVISIONS**

Unless this Agreement provides otherwise: (a) This Agreement may be amended or modified only in writing and signed by both the Public Works Director and Permittee; provided that the Public Works Director shall have the right to terminate or revoke the Permit in accordance with this Agreement. (b) No waiver by any Party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required, or permitted hereunder may be made in the sole and absolute discretion of the Public Works Director or other authorized City official. (d) This Agreement (including its Attachments and associated documents hereto), the Permit, the Board of Supervisors legislation approving the Permit, and any authorization to proceed, discussions, understandings, and agreements are merged herein. (e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. The Public Works Director shall have the sole discretion to interpret and make decisions regarding any and all discrepancies, conflicting statements, and omissions found in the Permit, Agreement, the Agreement's Attachments and associated documents, and Improvement Plans, if applicable. (f) Time is of the essence. (g) This Agreement shall be governed by California law and the City's Charter. (h) If either Party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees

regularly charged by private attorneys in San Francisco with comparable experience, notwithstanding the City's use of its own attorneys. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns. (k) City is the sole beneficiary of Permittee's obligations under this Agreement. Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, nor shall it give rights to the Parties expressly set forth above. Without limiting the foregoing, nothing herein creates a private right of action by any person or entity other than the City. (l) This Agreement does not create a partnership or joint venture between the City and Permittee as to any activity conducted by Permittee in its performance of its obligations under this Agreement. Permittee shall not be deemed a state actor with respect to any activity conducted by Permittee on, in, around, or under the Improvements pursuant to this Agreement.

## 25. INDEMNIFICATION

**25.1** Any Assignee, on behalf of itself and its successors and assigns ("**Indemnitors**"), shall indemnify, defend, and hold harmless ("**Indemnify**") the City including, but not limited to, all of its boards, commissions, departments, agencies, and other subdivisions, including, without limitation, the Department and the Port, and all of the heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, for any damages the Indemnified Parties may be required to pay as satisfaction of any judgment or settlement of any claim or legal or administrative action (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, or loss of or damage to property, or any negligent act or omission of the Indemnitor in or about the Permit Area arising from the Permitted Activities, and except to the extent they arise exclusively from the City's active negligence, willful misconduct, or failure to maintain one or more Improvements after agreeing to perform such maintenance and accepting funding from Permittee for that purpose; (b) any default by such Indemnitors in the observation or performance of any of the terms, covenants, or conditions of this Permit to be observed or performed on such Indemnitors' part; and (c) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Indemnitors in, under, on, or about the Permit Area arising from the Permitted Activities. Assignee on behalf of the Indemnitors specifically acknowledges and agrees that the Indemnitors have an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to such Indemnitors by the City and continues at all times thereafter. Assignee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work. It is expressly understood and agreed that the applicable Indemnitor shall only be responsible for Claims arising or accruing during its period as Permittee under this Permit.

**25.2** As between the City and Port, so long as Permittee is Port, Port is responsible for any third-party claim related to Port's operation, maintenance, repair, and replacement of the Improvements in the Permit Area which gave rise to the claim.

**25.3** Port shall require any Assignee to indemnify the Indemnified Parties as set forth herein in any separate agreement with Assignee. In the event of a conflict between Section 25.1 and the indemnity provision required by Port, the provision providing the greatest indemnification to the Indemnified Parties shall apply.

## **26. SEVERABILITY**

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

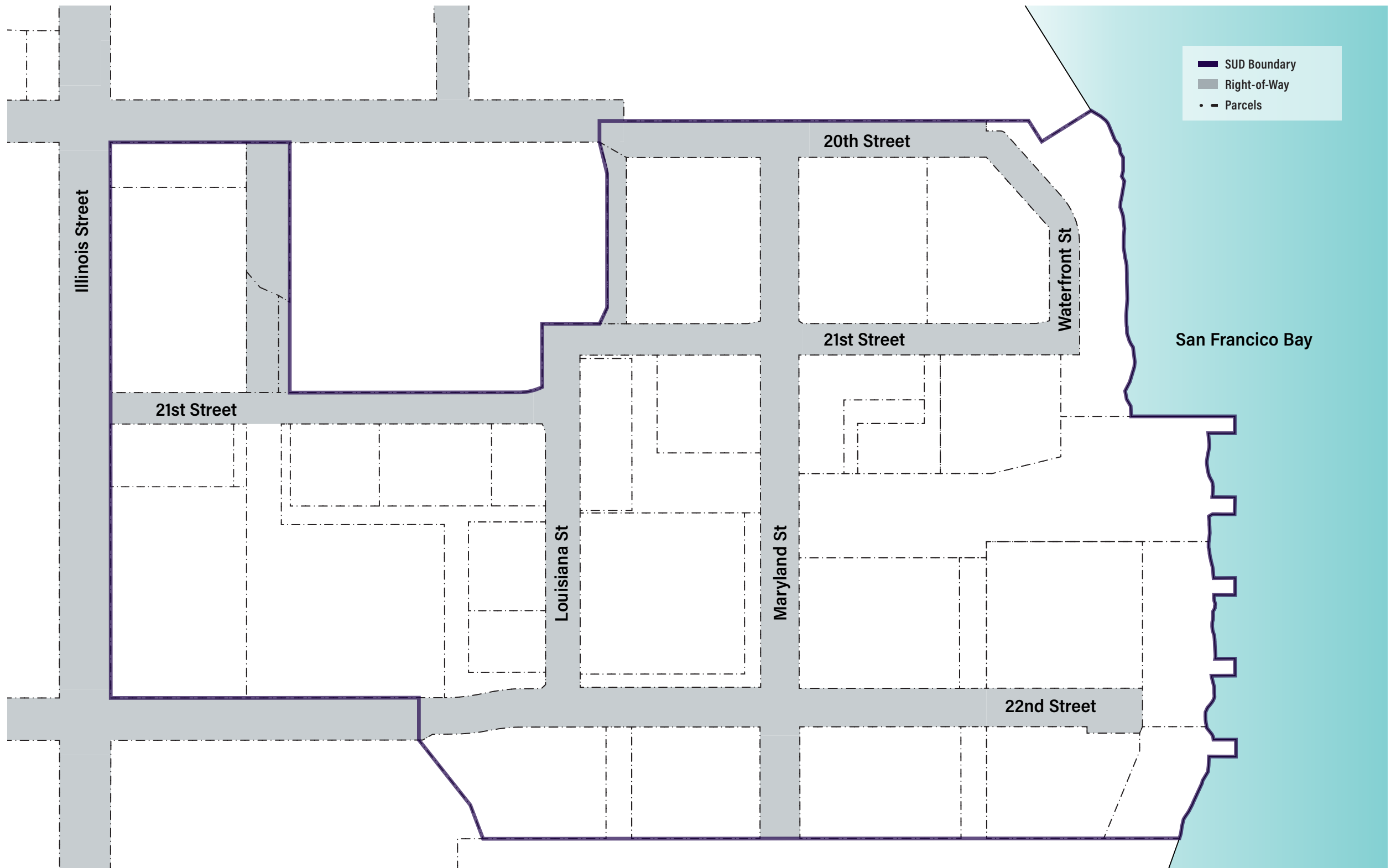
## **27. FORCE MAJEURE**

If Permittee is delayed, interrupted, or prevented from performing any of its obligations under this Agreement, excluding all obligations that may be satisfied by the payment of money or provision of materials within the control of Permittee, and such delay, interruption, or prevention is due to fire, natural disaster, act of God, war, terrorism, riot, civil insurrection, federal or state governmental act or failure to act, labor dispute, unavailability of materials, epidemics, pandemics, and related governmental orders and requirements (and private sector responses to comply with those orders and requirements) or any cause outside such Party's reasonable control, then, provided written notice of such event and the effect on the Party's performance is given to the other Party within thirty (30) days of the occurrence of the event, the time for performance of the affected obligations of that Party shall be extended for a period equivalent to the period of such delay, interruption, or prevention.

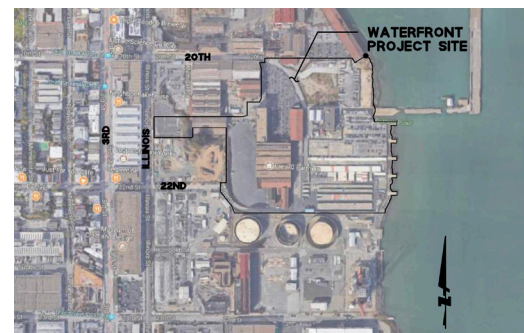
*[Signature Page to Follow]*

In witness whereof the undersigned Permittee(s) have executed this agreement on the dates set forth below.

<p>PERMITTEE:</p>     <p>_____ Official authorized to bind Permittee</p>    <p>_____ Secondary Official authorized to bind Permittee</p>	<p>_____ Date</p>    <p>_____ Date</p>
<p>CITY AND COUNTY OF SAN FRANCISCO acting by and through its DEPARTMENT OF PUBLIC WORKS, a municipal corporation</p>    <p>_____ City Engineer of San Francisco</p>    <p>_____ Public Works Director</p>	<p>_____ Date</p>    <p>_____ Date</p>



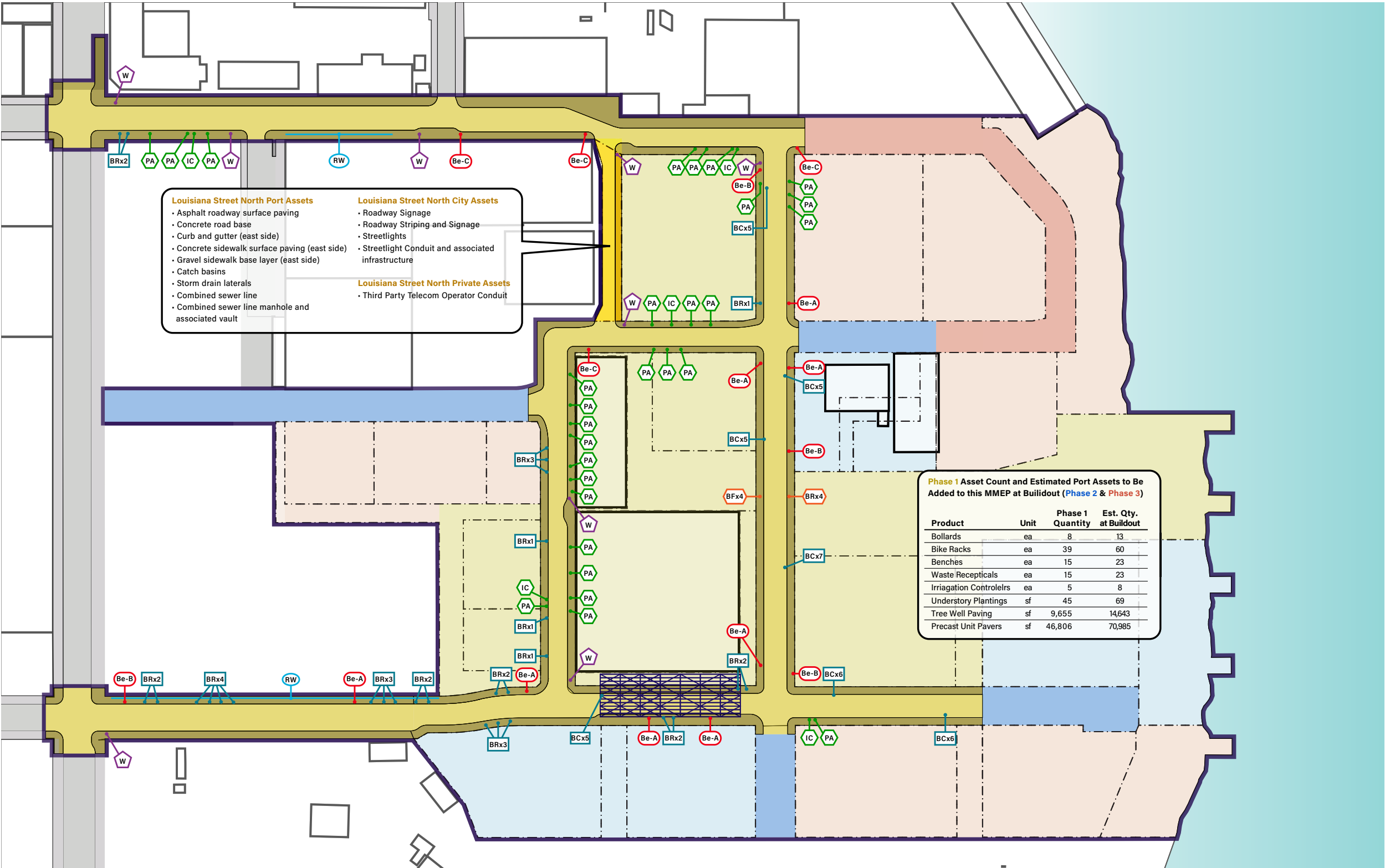
**Attachment 1:  
Pier 70 Global Project Area Map**



**Pier 70  
Vicinity Map**



*NOT TO SCALE*



# Attachment 2A: Pier 70 Global Area of Encroachments

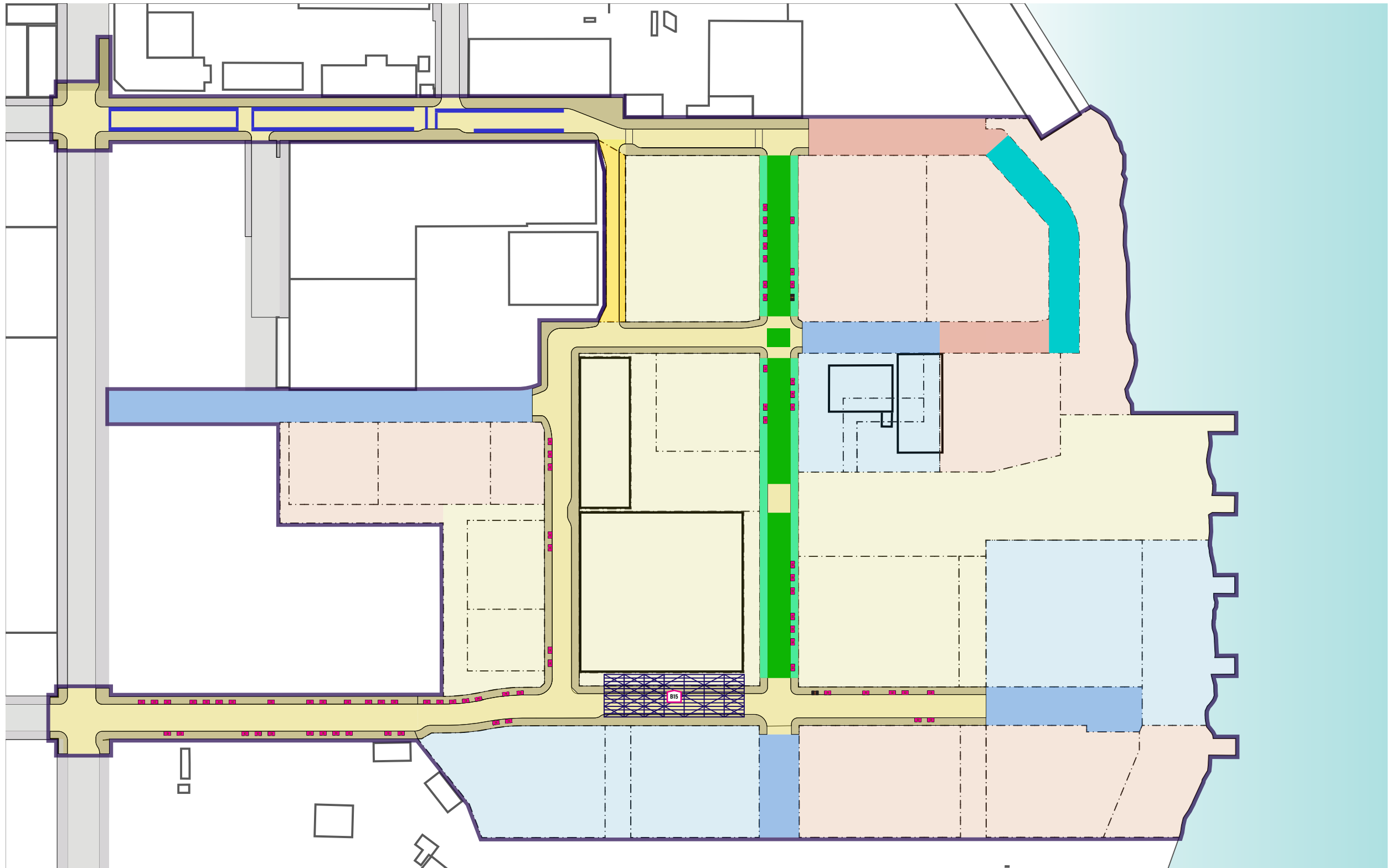
Notes: 1. Map does not show non-standard Paving installed in Phase 1. For Special paving areas, see Map 2

- Be-A Bench Type A
- Be-B Bench Type B
- Be-C Bench Type C
- BFx4 Fixed Bollards (4 Bollards)
- BRx4 Removable Bollards (4 Bollards)
- BRx3 Sidewalk Bike Racks (3 Racks)
- BCx6 In-Street Bike Corral with 6 Racks

- W Waste Receptacle (Trash/Recycling)
- PA Planting Area
- IC Irrigation Controller
- RW Retaining Wall
- B15 Building 15

- Louisiana Street (North Block)
- Phase 1
- Phase 1 ROW (Completed)
- Louisiana St. North (Port ROW)
- Phase 2
- Phase 2 ROW (Future)
- Phase 3
- Phase 3 ROW (Future)



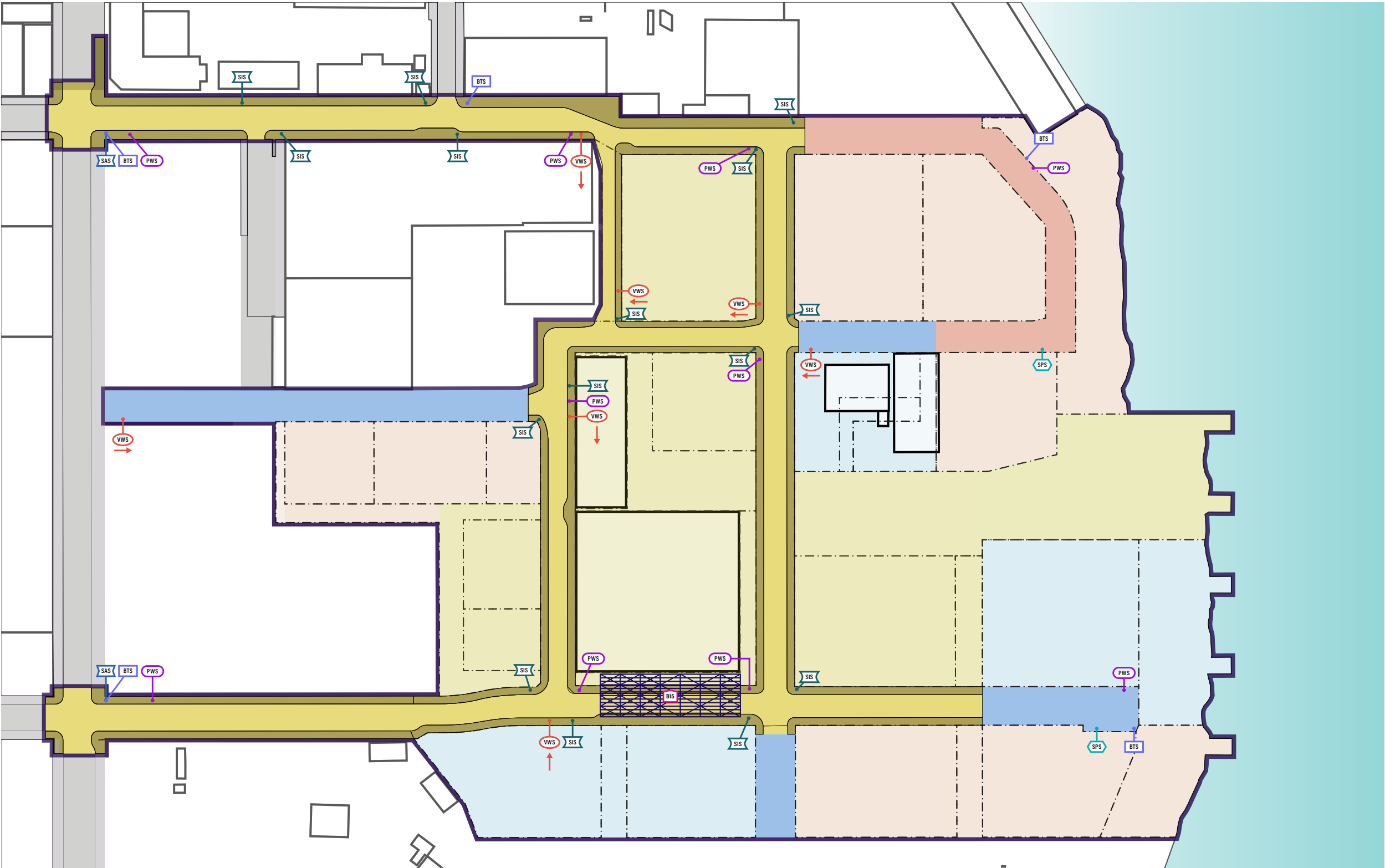


**Attachment 2B:**  
**Pier 70 Global Area – Port Maintained**  
**Special Paving**

- |   |   |
|---|---|
| <span style="color: blue;">■</span> 20th Street Cobble Stones in Parking Lane and Crosswalks      | <span style="color: pink;">■</span> Building 15                       |
| <span style="color: green;">■</span> Maryland Street Sidewalk Unit Pavers                         | <span style="color: orange;">■</span> Louisiana Street (North Block)  |
| <span style="color: green;">■</span> Maryland Street Roadway Unit Pavers                          | <span style="color: yellow;">■</span> Phase 1                         |
| <span style="color: cyan;">■</span> Waterfront Street Special Paving (To be installed in Phase 3) | <span style="color: yellow;">■</span> Phase 1 ROW (Completed)         |
| <span style="color: pink;">■</span> Tree Well Unit Pavers   | <span style="color: orange;">■</span> Louisiana St. North (Port ROW)* |
|   | <span style="color: blue;">■</span> Phase 2                           |
|   | <span style="color: lightblue;">■</span> Phase 2 ROW (Future)         |
|   | <span style="color: red;">■</span> Phase 3                            |
|   | <span style="color: lightorange;">■</span> Phase 3 ROW (Future)       |







# Attachment 2C: Pier 70 Proposed Wayfinding and Signage (All Phases)

- Notes:**
- 1. No wayfinding signage has been installed as of City acceptance of Phase 1 Streets (Spring 2024).
  - 2. The Pier 70 Signage and Wayfinding Plan proposes several signs adjacent to Port open space. These signs may be installed either in City ROW or Port open space.
  - 3. Proposed signage locations are conceptual and may change prior to installation

- Pedestrian Wayfinding Sign (Planned)
- Vehicular Wayfinding Sign (Planned)  
*Arrow shows direction of path*
- Bay Trail Sign (Planned)
- Shoreline Access Sign (Planned)
- Shoreline Parking Sign (Planned)

- Building 15
- Louisiana Street (North Block)
- Phase 1
- Phase 1 ROW (Completed)
- Louisiana St. North (Port ROW)\*
- Phase 2
- Phase 2 ROW (Future)
- Phase 3
- Phase 3 ROW (Future)



# Attachment 3:

## Pier 70 Global Maintenance Matrix and Maintenance Plan

Maintenance Item Number	Specific Improvement	Products	Maintenance Frequency	Maintenance Instructions	Approximate Quantities (Phase 1)	Approximate Quantities (Full Buildout)	Estimate of Annual Maintenance Costs (Phase 1)	Estimate of Annual Maintenance Costs (Full Buildout)
	Real Property underlying Dedicated Right-of-Ways and Open Space Lands							
	Street Improvements in Dedicated Right-of-Ways							
4.	Non-Standard Roadway Treatment	Cobblestones in 20th Street, Stepstone precast unit pavers in Maryland Street	Sweep and inspect for lift/cracks weekly Pressure wash annually/as needed	* Pressure washing Cobblestones, stepstone pavers with care, adjust pressure to the concrete paver manufacturer's permitted level to preserve the shape and color of concrete pavers. If a more aggressive cleaning is needed, a standard masonry cleaner can be used. * Cleaner should test a small inconspicuous area to ensure that the results are satisfactory; some masonry cleaners are acid based and may etch the surface of the concrete. * Always follow the cleaner manufacturer's application instructions. * Paver manufacturer and model numbers should be preserved properly for future restoration and repair work.	9,700 SF cobblestones 26,800 SF precast unit pavers (street)	14,600 SF cobblestones 40,600 SF precast unit pavers (street)	\$30,000	\$45,600
7.	Stationary Sidewalk Furniture	Streetlife benches, Dispatch trash receptacles, MaxiForce bollards	Control Litter & Empty Trash Receptacles daily Control litter after events as needed Remove posting/graffiti as needed Clean Benches, Bike Racks weekly Repair/replace Trash Receptacles, Bike Racks as needed Inspect bollards annually Repair/replace bollards as needed.	<b>Benches:</b> The slats can be cleaned with clear water and a soft brush or cloth. The use of detergents is discouraged. For removing algae or moss, recommend the use of biodegradable cleaning agents. Do not use a high pressure cleaner or similar; this will open up the wood grain and make the surface coarse. Bench wood can be replaced if it is burned, gouged with spear inventories on site. <b>Trash Receptacles:</b> Metal surfaces can be cleaned as needed using a soft cloth or brush with warm water and a mild detergent. Avoid abrasive cleaners. <b>Bollards:</b> Routine inspections and maintenance steps need to be carried out. The salt and moisture in the air at Pier 70 can create a damaging buildup of salt on the Bollards. This damaging build-up requires timely inspections of all Bollards to detect and subsequently remove the harmful residue. All bollards should be cleaned regularly, ideally with warm soapy water, or a solution of water and detergent, and a soft nylon brush. Once cleaned and rinsed, dry with a soft cloth.	16 benches 15 trash receptacles 8 bollards	25 benches 23 trash receptacles 13 bollards	\$15,000	\$22,800
10.	Non-standard Sidewalk Streetlife Zone	Stepstone precast unit pavers in Maryland Street sidewalk, irrigation system for sidewalk planting	Sweep and inspect for lift/cracks weekly Pressure wash annually/as needed. Irrigation system check monthly, repair/replacement as needed Check irrigation programing twice a year	For Stepstone precast unit pavers in Maryland Street sidewalk, same maintenance instructions as item 4. <b>Irrigation System:</b> Check Springkler head water pressure routinely. Adjust the springkler schedule to extend the system's lifespan and save water. Winterize the irrigation system once temperatures reach or are below freezing; clean/ repair/replace broken heads as needed	20,000 SF precast unit pavers (sidewalk) 5 irrigation controllers	30,300 SF precast unit pavers (sidewalk) 8 irrigation controllers	\$15,000	\$22,800
	Miscellaneous Elements							
20.	Building 15 Structural Frame	Building 15 frame Everbrite coating	Full inspection coating condition every 2 years Remove Posting/Graffiti weekly or as needed	* Remove all wax, silicone, oil, and grease with a stripper or solvent; remove chalk, rust, and dead or loose paint; wash the surface with Everbrite cleaners or other free-rinsing detergent; rinse well and allow to dry completely. * Rish thoroughly; do not allow the cleaners to dry on the surface. * If an acid cleaner is used, neutralize with EZ Prep Cleaner & Neutralizer or a solution of baking soda & water. Once clean, do not contaminate the surface with waxes, polish or silicone. * Apply three layer coats (Paint ID number: EB128) with paint sprayer with a fine finish tip, high-density form roller, sponge brush, nature bristled brush, applicator pad, dries to touch in 15-30 minutes. * Recoat before any tarnish or oxidation is seen or at the first sight of slight color change. * Conduct inspections by licensed structure engineers every 2 years with appropriate documentation showing the condition of the structure frame.	N/A	N/A	\$15,000	\$22,800
22.	Non-Standard Bike Rack/Corrals	Bike racks	Repair/replacement as needed Remove Posting/Graffiti as needed	The finish of the racks does not need to be maintained aside from postings/graffiti removal (as needed)	39 bike racks	60 bike racks	\$6,000	\$9,120

**Notes:**

1. Annual Estimated costs are based on proposed scope of work and frequency with industry average standard, unit costs given here are estimated and do not constitute a firm quote. These estimated costs are based on the quote provided third party service venders and subject to change if new requirement is forthcoming.

2. Under the Owners' Association, this Budget maintenance will be performed by various 3rd party vendors and therefore there will be no dedicated FTEs (Full Time Employee) for these services. The cost table reflected in the budget assumes maintenance contract costs for the appropriate 3rd party contractors. Contractors will determine the allocation of staff with hours and specialized equipment (such a Pressure Washer/Steamer, Lawn Mower, Maintenance Vehicle, etc.) in order to successfully fulfill the scope of work in the service agreements.

3. All costs presented in February 2024 dollars.

4. Full buildout quantities are estimates based on phases 2 and 3 using similar designs and materials. Phase 2 and 3 designs have not yet been completed and are subject to change.

Description	Manufacturer	Model Number	Description*	Phase 1 Quantities	Unit	Unit Cost* (Material + Installation)	Total (Material + Installation) Installation Cost*	With 20% Markup	% of Initial Construction cost to replace	Est. Replacement Cost	Life-Cycle (years)	No. of Replacements 40 years	Annual Contribution to Reserve Fund
Lights / Bollards													
Bollard	MAXIFORCE	MFSN-SS2-N (fixed) MCSP-SS2-S (collapsible)	Standard Body, Padlock Operated, Standard Style 2 Head, Simple Base Fix and Collapsible Bollard	8	ea	\$ 1,500	\$ 12,000	\$ 14,400	50%	\$ 7,200	20	2.0	\$ 720
Fixtures & Elements													
Bike Rack	URBAN ACCESSORIES	SFP	Custom 36" Ring, Surface Mount, ductile iron ASTM A536 class 65-45-12 Material with Baked Oil Finish, Cast in 1 piece.	39	ea	\$ 1,800	\$ 70,200	\$ 84,240	50%	\$ 42,120	10	4.0	\$ 16,848
Bench	STREETLIFE	DB-L2-300-TH /CT/ PC; DB-T-BR1-180-TH / TT / PC; DB-L1-300-TH /CT/ PC	Wooden bench nature color with 2 beams and steel supports; with 2 beams and steel supports, top mounted with 1 armrest; with 1 beam and steel supports	16	ea	\$ 9,500	\$ 152,000	\$ 182,400	50%	\$ 91,200	15	2.7	\$ 16,213
Trash Recepticals	FORMS+SURFACES	SLDIS-216	Dispatch Receptacle with ink blue texture powdercoat, 36-gallon, split-stream (litter & recycling), two 16-gallon half liners	15	ea	\$ 1,000	\$ 15,000	\$ 18,000	50%	\$ 9,000	10	4.0	\$ 3,600
Irrigation Controller	WEATHERTRAK	WTLC-C-06-PL-F	Covered by Irrigation and Landscaping O&M manual	5	ea	\$ 5,000	\$ 25,000	\$ 30,000	50%	\$ 15,000	15	2.7	\$ 2,667
Landscaping													
Low Planting	See SIP landscape drawings for planting plan			45	ea	\$ 500	\$ 22,500	\$ 27,000	100%	\$ 27,000	30	1.3	\$ 1,200
Concrete & Pavement													
Vehicular Cobblestone Pavement	ROMEX	ROMPOX - D2000	Apply stone gray color pavement jointing mortar with salvaged cobblestones.	9,655	sf	\$ 25	\$ 241,373	\$ 289,647	30%	\$ 86,894	20	2.0	\$ 8,689
Pavers	STEPSTONE	PA S1 & PA S2	Narrow Modular Pavers in light, medium and dark gary color, 6"X18"X2-1/2" size for Maryland Street Sidewalk & 6"X18"X4" size for Maryland Street	46,806	sf	\$ 35	\$ 1,638,210	\$ 1,965,852	30%	\$ 589,756	30	1.3	\$ 26,211
Permeable Paving at Tree Wells	SALVAGED COBBLESTONE PAVERS	4"x4"	Tree wells are filled with 4"X4" cobblestone pavers with rough crushed gravel	3,091	sf	\$ 55	\$ 170,005	\$ 204,006	30%	\$ 61,202	20	2.0	\$ 6,120
Vehicular Concrete	Please refer to Submittal #03-3000-11.0 - Vehicular Concrete Crosswalk - Concrete Mix Design 03-3000 - Cast-in-Place Concrete & Submittal #32-1316-5.0 - Seeded Vehicular Concrete Mockup 32-1316 - Exterior Landscape Concrete			9,753	sf	\$ 25	\$ 243,813	\$ 292,575	30%	\$ 87,773	30	1.3	\$ 3,901
Asphalt Concrete Pavement	Please refer to Submittal #32-1216-1.0 - Asphalt Paving 32-1216 - Asphalt Paving			5,916	sf	\$ 18	\$ 106,484	\$ 127,781	30%	\$ 38,334	30	1.3	\$ 1,704
Pedestrian Concrete/Sidewalk	Please refer to Submittal #03-3000-15.2 - Sidewalk and Street Base Concrete 03-3000 - Cast-in-Place Concrete			83,478	sf	\$ 20	\$ 1,669,552	\$ 2,003,462	35%	\$ 701,212	30	1.3	\$ 31,165
Retaiing Wall	Please refer to Submittal #31-3516-8.1 - Concrete Mix Design 31-3516 - Shoreline Protection			467	lf	\$ 300	\$ 140,190	\$ 168,228	30%	\$ 50,468	30	1.3	\$ 2,243
Total for all items													\$ 121,282

\*Notes: Please refer to submittals for Concrete and Pavement's detail specifications

Estimated Maintenance Labor Cost

Staffing	Scope of Work	Frequency	Base Rate / Hr	Hours	Annual
Landscaper	Low planting maintenance, pest control on timely basis.	Service twice a month	\$ 28.00	192	\$ 5,376.00
Laborer	Site fixtures cleaning, inspection, inspect for lift/cracks, paver power washing,	Service Weekly & as needed	\$ 28.00	416	\$ 11,648.00
Plumber	Check Irrigation system on timely basis, repair/replace hardware as needed, programming irrigation system timely.	Service Once a month & Inspect Bi-Annually	\$ 75.00	106	\$ 7,950.00
Janitor	Control Litter and empty trash receptacles daily, control litter after events, clean benches, bike racks and site furnishings.	Clean daily & as needed	\$ 22.00	2,080	\$ 45,760.00
Painter	Clean site furnishing surface, remove graffiti including building 15	Service monthly & as needed	\$ 30.00	126	\$ 3,780.00
Iron Worker	Repair and replace hardware as needed, such as bike racks, trash receptacles, etc.	Service as needed		as needed	\$ 6,000.00
	Materials and Supplies				

## **Attachment 4:**

# **List of Pier 70 Global Operations and Maintenance Manuals**

1. Building 15 Everbrite Coating O&M Manual
2. Dispatch Trash Receptacle O&M Manual
3. Dispatch Trash Receptacle Cleaning Instructions
4. MaxiForce Bollards O&M Manual
5. Pier 70 - Irrigation and Landscaping O&M Manual
6. Stepstone Precast Paver Cleaning Instructions
7. Streetlife Bench Maintenance Instructions