

1 [Public Works, Administrative Codes - Mission Rock Utilities, Inc. - Master Encroachment
2 Permit for Privately-Owned District Utility System]

3 **Ordinance granting a revocable master encroachment permit to Mission Rock Utilities,**
4 **Inc., a Delaware corporation, to maintain encroachments on and beneath the public**
5 **right-of-way on portions of Terry A. Francois Boulevard, Bridgeview Way, Dr. Maya**
6 **Angelou Lane, Toni Stone Crossing, Third Street, and Long Bridge Street within and**
7 **adjacent to the Mission Rock Special Use District, which encroachments include but**
8 **are not limited to non-potable water systems, gravity and force main sewer systems,**
9 **heating and chilled water systems, and conduits for fiber optic cable for purposes of**
10 **communications for these systems; authorizing Public Works to receive annual**
11 **payments from permittee to cover potential costs the City may incur in the event that**
12 **the encroachments are abandoned; adopting environmental findings under the**
13 **California Environmental Quality Act; and making findings of consistency with the**
14 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
18 **Board amendment additions** are in double-underlined Arial font.
19 **Board amendment deletions** are in ~~strikethrough Arial font~~.
20 **Asterisks (* * * *)** indicate the omission of unchanged Code
21 subsections or parts of tables.

22 Be it ordained by the People of the City and County of San Francisco:

23 Section 1. Background and General Findings.

24 (a) This ordinance addresses the Board of Supervisors' ("Board") approval of a
25 revocable master encroachment permit and the associated maintenance agreement to enable
the private utility company Mission Rock Utilities, Inc., a Delaware corporation ("Permittee"), to

1 maintain certain privately-owned improvements that comprise a district system as private
2 encroachments on and beneath the public right-of-way on portions of Terry A. Francois
3 Boulevard, Bridgeview Way, Dr. Maya Angelou Lane, Toni Stone Crossing, Third Street, and
4 Long Bridge Street within and adjacent to the Mission Rock Special Use District, which was
5 established by Planning Code Section 249.80, at the full buildout of the Mission Rock project
6 (“Project”). These encroachments include but are not limited to non-potable water systems,
7 gravity and force main sewer systems, heating and chilled water systems, and conduits for
8 fiber optic cable for purposes of communication for these systems (collectively, the “MRU
9 Encroachments”) that have been installed by the master developer of Phase 1A of the Project
10 and for such MRU Encroachments that will be installed in future phases of the Project. As
11 part of Phase 1A of the Project, Permittee seeks to annex into the master encroachment
12 permit certain privately-owned improvements on and beneath the public right-of-way on
13 portions of Terry A. Francois Boulevard, Bridgeview Way, Dr. Maya Angelou Lane, Toni Stone
14 Crossing, and Third Street.

15 (b) Pursuant to Public Works Code Sections 786 et seq., Permittee requested
16 permission to maintain the MRU Encroachments in the public right-of-way for the life of a
17 master encroachment permit to be issued pursuant to Public Works Code Sections 786 et
18 seq., which permit is to be memorialized by a master encroachment permit and an associated
19 maintenance agreement (collectively, the “Permit” or “MRU MEP”) between Permittee and the
20 Department of Public Works (“Department”), a draft of which is on file with the Clerk of the
21 Board of Supervisors in File No. 25188 and incorporated herein by reference.

22 (c) The portion of the Project area subject to the Permit is generally bounded by
23 Mission Rock Street, Third Street, Terry A. Francis Boulevard, and China Basin Park, which is
24 depicted in the “Global Diagram” of the Permit.

25

1 (d) California Statutes of 1968, Chapter 1333 (“Burton Act”) and San Francisco
2 Charter Section 4.114 and Appendix B empower the Port Commission to use, conduct,
3 operate, maintain, manage, regulate, and control the lands within Port Commission jurisdiction
4 subject to the public trust.

5 (e) The Project is subject to that certain Disposition and Development Agreement
6 between the City, acting by and through its Port Commission (“Port”) and Seawall Lot 337
7 Associates, LLC, a Delaware limited liability company, approved by the Board through the
8 passage of Resolution No. 42-18 and partially assigned to Mission Rock Horizontal Sub
9 (Phase I), L.L.C., a Delaware limited liability company (the “Subdivider”), and recorded in the
10 official records of the Office of the San Francisco Assessor-Recorder (“Official Records”) on
11 August 17, 2018 as Document No. 2018-K656938 (as amended, “DDA”) and that certain
12 Development Agreement between the City and the Subdivider, which the Board approved
13 through Ordinance No. 33-18 (“Development Agreement”).

14 (f) The infrastructure plan that is incorporated into the DDA and the Development
15 Agreement (as amended, the “Infrastructure Plan”) contemplated the construction of a
16 “sustainable district energy system” throughout the Project. The MRU Encroachments
17 comprise the first phase of a district utility system installed for the purpose of supplying the
18 Project with sustainable energy. For Phase 1A of the Project, the Subdivider has constructed
19 the MRU Encroachments in accordance with Final Map No. 9443, recorded in the Official
20 Records on June 12, 2020 as Document No. 2020-K940602, and the Infrastructure Plan and
21 specifications shown in Street Improvement Permit No. 20 IE-00486, dated October 1, 2020,
22 as modified by Instructional Bulletins #1 through #13 (the “Street Improvement Permit”).

23 (g) In Public Works Order 211444, dated February 20, 2025 (the “Order”), the Director
24 and the City Engineer (collectively, the “Director”) recommended that the Board approve the
25 MRU MEP. The Order and MRU MEP, including the maintenance agreement and other

1 documents associated with the Permit, are on file with the Clerk of the Board of Supervisors in
2 File No. 250188 and incorporated herein by reference.

3 (h) As memorialized in the Order, due to the placement of the MRU Encroachments
4 below the public right-of-way, the Director recommended that the Board authorize the
5 Department to require Permittee to contribute funds toward a City account that is set aside
6 and designated to be used – in the event Permittee abandons the MRU Encroachments – for
7 the safe abandonment and removal of the MRU Encroachments, the restoration of the
8 associated public right-of-way, and other City costs associated with the abandonment of the
9 MRU Encroachments (the “Removal, Restoration, and Abandonment Account”). In addition,
10 the Permit requires Permittee to obtain and maintain membership in a regional notification
11 center (e.g., Underground Service Alert - Northern California), and prior to the effective date of
12 the Permit, Permittee shall provide the Department with written proof of such membership.
13 Moreover, to help minimize potential conflicts between the MRU Encroachments and City
14 projects, the Permit requires that whenever the City determines the MRU Encroachments are
15 in conflict with any City project, including but not limited to water and sewer pipe installation
16 and building construction, Permittee shall: (1) prepare utility support and work-around plans
17 (each a “SWAP”), estimates, and specifications such that Permittee’s SWAP can be
18 incorporated into any City contract, as further specified in the Permit; and (2) work directly
19 with any City contractor to pay said contractor for all costs, direct and indirect, including for
20 extra work and/or delay, incurred as the result of the existence of the MRU Encroachments
21 within a City project limit, as further set specified in the Permit.

22 (i) In the Order, the Director also recommended that the Board delegate to the Director
23 authority to approve contiguous and non-contiguous annexation of new areas of the project
24 site into the Permit, as applicable, and assignments of rights and obligations from the original
25

1 permittee to the permittee’s agent or assignee, all based on terms, conditions, and obligations
2 consistent with the Permit and Public Works Code Sections 786 et seq.

3 (j) The Director also recommended that the Board delegate to the Director the ability to
4 divide the Permit into separate master permits or individual street encroachment permits in
5 accordance with Public Works Code Sections 786 et seq.

6
7 Section 2. Environmental and Land Use Findings.

8 (a) In a letter dated February 6, 2025 (“Planning Department Letter”), the Planning
9 Department determined that the actions contemplated in this ordinance comply with the
10 California Environmental Quality Act (California Public Resources Code Sections 21000 et
11 seq.) and do not trigger the need for subsequent environmental review. Said determination is
12 on file with the Clerk of the Board of Supervisors in File No. 250188 and is incorporated herein
13 by reference.

14 (b) In this same letter, the Planning Department determined that the actions
15 contemplated in this ordinance are consistent, on balance, with the City’s General Plan and
16 eight priority policies of Planning Code Section 101.1.

17 (c) The Board adopts as its own the environmental findings and the General Plan and
18 Planning Code Section 101.1 consistency findings in the Planning Department Letter.

19
20 Section 3. Prerequisites to Finalizing the Permit.

21 (a) The final approved Permit shall be in substantially the same form as that in the
22 Clerk of the Board of Supervisor’s File No. 250188.

23 (b) The Permit shall not become effective until all of the following have been
24 completed:

1 (1) The Permittee executes and acknowledges the Permit and delivers said
2 Permit and all required documents and fees to the Department.

3 (2) A notice of special restrictions in substantially the same form as that in the
4 Clerk of the Board of Supervisor’s File No. 250188 (“Notice of Special Restrictions”) is
5 recorded in the Official Records to provide record notice to owners within the Mission Rock
6 Special Use District that “District Wide Facilities,” as defined in that certain Mission Rock
7 Master Declaration of Restrictions recorded on June 25, 2020 as Document No. DOC 2020-
8 K944344 of Official Records, have been installed to serve multiple parcels within the Project,
9 and that the Permittee is the owner and operator of such District Wide Facilities. Prior to the
10 Permit’s effective date, the Notice of Special Restrictions shall be recorded against Lots 1, 2,
11 3, and 4 of Final Map No. 9443. For future development phases, the Notice of Special
12 Restrictions shall be recorded concurrently with the first to occur of either the recording of the
13 associated phased final map creating a lot for any building to be served by the Improvements
14 or the annexation of that Project phase into the MRU MEP.

15 (c) The Permittee or Permittee’s agent, at Permittee’s sole expense and as is
16 necessary as a result of the Permit, shall:

17 (1) Provide for the support, work around, and protection of facilities, at
18 Permittee’s sole cost and expense, as required under the Permit;

19 (2) Provide access to such facilities to allow said entities to construct,
20 reconstruct, maintain, operate, or repair such facilities as set forth in the Permit; and

21 (3) Remove, relocate, adjust, and support the MRU Facilities, at Permittee’s
22 sole cost and expense, as may be prescribed by the City according to the Permit; and

23 (4) Assume all costs for the maintenance and repair of the MRU
24 Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to
25 the Department by reason of this permission granted.

1 (d) The Board of Supervisors (the "Board") delegates to the Director the authority to:
2 (1) approve and, if required, record said Permit and associated agreements on substantially
3 the same terms as the drafts on file with the Clerk of the Board of Supervisors in File
4 No. 250188; (2) divide the Permit into separate master encroachment permits, major
5 encroachment permits, or individual street encroachment permits; (3) approve contiguous and
6 non-contiguous annexation of new areas of the project site into the Permit; and (4) approve
7 assignments of rights and obligations from the original permittee to the permittee's agent or
8 assignee.

9 (e) The Board directs the Director to submit a copy of the final Permit and associated
10 agreements within 30 days of final issuance or execution, whichever last occurs, to the Clerk
11 of the Board of Supervisors.

12
13 Section 4. MRU Permit Approval.

14 (a) Pursuant to Public Works Code Sections 786 et seq., the Board hereby grants
15 revocable, personal, non-exclusive, and non-possessory permission to the Permittee to
16 occupy the public right-of-way depicted in the Permit's Global Diagram with the MRU
17 Encroachments and maintain said MRU Encroachments under terms of the Permit and this
18 ordinance. The Board acknowledges that as an implementing action following the Board's
19 approval of this ordinance, the Director will separately approve the annexation of the MRU
20 Encroachments for Phase 1A of the Project into the Permit according to the terms of this
21 ordinance and the Permit.

22 (b) The Board accepts the recommendations of the Order and approves the Permit
23 with respect to the MRU Encroachments. The Board also authorizes the Director to perform
24 and exercise the City's rights and obligations with respect to the MRU Encroachments and to
25 enter into amendments or modifications to the Permit with respect to the MRU Encroachments

1 subject to the limitations set forth below. The authorized amendments and modifications are
2 those that the Director, in consultation with the City Attorney, determines are in the best
3 interest of the City, do not materially increase the obligations or liabilities of the City or
4 materially decrease the obligations of the Permittee or its successors, are necessary or
5 advisable to effectuate the purposes of the Permit or this ordinance with respect to the MRU
6 Encroachments, and are in compliance with all applicable laws.

7 (c) The Board acknowledges the public right-of-way occupancy assessment fee is
8 waived in accordance with the Director’s determination under Public Works Code
9 Section 786.7(f)(3) regarding a Development Agreement project.

10 (d) Notwithstanding any conflicting provisions of Public Works Code Sections 786 et
11 seq., the Board approves the Director’s recommendation that the Board authorize the
12 Department to require Permittee to contribute funds annually toward the Removal,
13 Restoration, and Abandonment Account, for the duration specified in the Permit. Any
14 conflicting provisions of Public Works Code Section 786 et seq. do not apply pursuant to this
15 ordinance.

16
17 Section 5. Chapter 10 of the Administrative Code is hereby amended by revising
18 Section 10.100-229 to Article XIII, to read as follows:

19
20 **SEC. 10.100-229. PUBLIC WORKS ENCROACHMENT ~~MAINTENANCE~~ FUND.**

21 (a) **Establishment of Fund.** The Public Works Encroachment Fund is established as
22 a category 8 fund to receive the maintenance endowment payments that permittees make in
23 accordance with Public Works Code Section 786.8. In addition, the Public Works Encroachment
24 Fund may receive additional funds as authorized by the Board of Supervisors including payments for
25 the account set aside as the “Mission Rock Utilities Removal, Restoration, and Abandonment Account”

1 that Mission Rock Utilities, Inc., a Delaware corporation (“Permittee”) makes in accordance with
2 Ordinance No. _____ and the associated master encroachment permit (“MRU Permit”) for the
3 privately-owned utility systems comprised of (i) a blackwater treatment plant; (ii) pipes; (iii) heating
4 and chilled water facilities in two buildings within the Project site; (iv) non-potable water facilities;
5 (iv) gravity and force main sewer facilities; and (v) conduits for fiber optic cable for purposes of system
6 communication, used for purposes associated with the treatment of wastewater, the distribution of
7 recycled water, and thermal heating and cooling services to and within the buildings (“District
8 Systems”) located within the Mission Rock Project (the “Project”) as described in that certain
9 Disposition and Development Agreement by and between the City, acting by and through the Port
10 Commission, and Seawall Lot 337 Associates, LLC (“Master Developer”), recorded in the Official
11 Records of the City and County of San Francisco on August 17, 2018, as Document No. 2018-K656938.

12 (b) **Use of Fund.**

13 (1) Maintenance Endowment Payments. If any street encroachment permittee fails
14 to perform maintenance in accordance with the terms of a street encroachment permit or
15 abate any violation of permit terms, including any City required modification or restoration,
16 under Public Works Code Sections 786 et seq., Public Works may use the Public Works
17 Encroachment ~~Maintenance~~ Fund to cover any costs that Public Works or any other City
18 agency, department, or commission, including the City Attorney’s Office, incurs in performing
19 any street encroachment permittee’s maintenance obligation or abating a violation of any
20 street encroachment permit. If the City incurs such costs while a permittee is paying the
21 maintenance endowment required under Public Works Code Section 786.8 and the
22 Department uses the Maintenance Endowment Fund to address such costs at the subject
23 permittee’s street encroachment permit location, then the Department shall place any
24 permittee reimbursed funds under Section 786.8(e) and (f) back into the Public Works
25 Encroachment ~~Maintenance~~ Fund in an amount equivalent to such City costs, but in no case

1 more than the subject permittee's required maintenance endowment payment would have
2 been at the time the City incurred such costs. If the Board of Supervisors requires a permittee
3 to deposit money into the Public Works Encroachment ~~Maintenance~~ Fund for restoration under
4 Public Works Code 786.8(h), then the Public Works Director shall use such money to restore
5 the street encroachment permit area to a condition satisfactory to the Director if the permittee
6 fails to do so at the permittee's sole and absolute cost. If the restoration cost to Public Works
7 is less than the amount of the deposit or the permittee completes the restoration at the
8 permittee's sole and absolute cost, the Public Works Director shall refund the any remaining
9 deposit to the permittee if there is an active permittee. If there is no permittee in existence at
10 the time of restoration to receive a refund, the Public Works Director may use the refund
11 amount for the other purposes identified in this subsection (b).

12 (2) Mission Rock Utilities Removal, Restoration, and Abandonment Account. In the
13 event that any portion of the MRU Permit is terminated or revoked, if the Permittee fails to timely cure
14 a default of the MRU Permit as required under the MRU Permit, the Department may proceed to cure
15 the default and withdraw from the Fund the Department's actual costs to remedy said default in
16 addition to any fines or penalties described in any notice of violation, all according to the terms of the
17 MRU Permit. The Department may use the Fund to cover any costs that the Department or any other
18 City agency, department, or commission, including the City Attorney's Office, incurs in performing any
19 remedy of the Permit default. Upon termination of the MRU Permit in its entirety, the Department
20 shall return any unused balance in the Mission Rock Utilities Removal, Restoration, and Abandonment
21 Account to Permittee, less any administrative processing cost.

22 (c) Administration of Fund. Public Works shall submit to the Board of Supervisors an
23 annual written report of revenues to and expenditures from the Fund established in this
24 Section 10.100-229.

1 Section 6. Article 15 of the Public Works Code is hereby amended by revising Section
2 786.8, to read as follows:

3 **SEC. 786.8. MAINTENANCE ENDOWMENT FOR STREET ENCROACHMENT**
4 **PERMITS WHERE THE PERMITTEE IS NOT THE OWNER OF ADJACENT**
5 **PROPERTY.**

6 (a) If a permittee is not the owner of real property adjacent to the street encroachment
7 permit, the permit is not recorded against the real property adjacent to the street
8 encroachment permit, or both, then the permittee shall pay the Department a maintenance
9 endowment to ensure adequate funds are available for ongoing and future maintenance of the
10 street encroachment permit area and any future modification or restoration of the permit area
11 to a condition satisfactory to the Public Works Director if the permittee abandons or terminates
12 the permit or the Director revokes the permit.

13 (b) The Department shall deposit all funds collected for the maintenance endowment
14 into the Public Works Encroachment ~~Maintenance~~ Fund as established under Administrative
15 Code Section 10.100-229.

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18 Section 7. Effective Date. This ordinance shall become effective 30 days after
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
21 overrides the Mayor's veto of the ordinance.

22
23 Section 8. Scope of Ordinance. In enacting this ordinance, the Board intends to
24 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
25 punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that

1 are explicitly shown in this ordinance as additions, deletions, Board amendment additions,
2 and Board amendment deletions in accordance with the "Note" that appears under the official
3 title of the ordinance.

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5 APPROVED AS TO FORM:
6 DAVID CHIU, City Attorney

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7 By: /s/ Christopher T. Tom
8 CHRISTOPHER T. TOM
9 Deputy City Attorney

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