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**MEMORANDUM OF UNDERSTANDING
REGARDING INTERAGENCY COOPERATION**

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE PORT COMMISSION OF SAN FRANCISCO

Regarding the development of the Pier 70 Waterfront Site

[Project Approval Date]

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**MEMORANDUM OF UNDERSTANDING
REGARDING INTERAGENCY COOPERATION**

(Pier 70 28-Acre Site)

This **MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COOPERATION** (Pier 70 Waterfront Site), referred to in the Transaction Documents as the Interagency Cooperation Agreement (this “**ICA**”) and dated for reference purposes as of _____, 2017 (the “**Reference Date**”) is between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”), acting by and through the Mayor, the Board of Supervisors, the City Administrator, the Director of Public Works, the San Francisco Municipal Transportation Agency and the San Francisco Public Utilities Commission (the “**Other City Parties**”), and the City, acting by and through the **PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO** (the “**Port**” or the “**Port Commission**”) (the Other City Parties and the Port, each a “**Party**”). This ICA is one of the Transaction Documents relating to the Project described in the Disposition and Development Agreement between the Port and FC Pier 70, LLC (“**Developer**”).

Initially capitalized and other terms not defined herein are defined in the Appendix or other Transaction Documents as specified in the Appendix, which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents.

RECITALS

A. This ICA specifies the roles and procedures that will apply to Other City Parties and consenting City Agencies assisting the Port in implementing the development of the 28-Acre Site in accordance with the Project Requirements, including, without limitation, with respect to:

1. Subdivision of the 28-Acre Site;
2. Construction of Horizontal Improvements for the Project, as described in the Infrastructure Plan (**ICA Attachment A**); and
3. Implementation of Project mitigation measures.

B. Developer, and its Transferees or Vertical Developers under the DDA, will develop the Horizontal Improvements and Vertical Improvements in Phases, as more particularly described in the DDA.

C. The SUD, together with the Design for Development, specifies the permitted land uses and development standards and guidelines for the 28-Acre Site. The procedures for design review and approval for new buildings and rehabilitation of historic buildings within the 28-Acre Site are specified in the SUD.

D. This ICA memorializes a process for the Port, Other City Parties, and consenting Other City Agencies to cooperate in undertaking, administering, performing and expediting review of all applications pertaining to Horizontal Development of the Project Site, including its subdivision, review and approval of Phase Applications, Master Utility Plans, design review of Public Spaces and Public ROW streetscape improvements, the review of Improvement Plans and the review, acceptance and approval of Horizontal Improvements for the Project that will be acquired by the Port or Other City Agencies as Acquiring Agencies under the Acquisition Agreement.

AGREEMENT

1. PURPOSE AND INTENT

1.1. Priority Project. In Board Resolution No. **XXXX**, based on Project benefits to the City as set forth in the DDA and the DA, the City determined in accordance with Campaign and Governmental Conduct Code section 3.400 that a public policy basis exists for this Project to receive priority processing. The City and the Port both found a compelling public policy in expedited review and permitting processes, which will minimize the negative financial impacts on the Port's rent revenues and Public Financing Sources that will be used to pay for the Horizontal Improvements.

1.2. Findings. Development of the Project in accordance with the Project Requirements, including DDA, Development Agreement, other and subsequent Project Approvals:

(a) is in the best interests of the City and County and the health, safety, and welfare of its residents;

(b) furthers the public purposes of applicable Project Requirements;
and

(c) is a priority for which they will act as expeditiously as is feasible to review and facilitate the processing of applications and implementation of Project development reviews and as described in this ICA.

1.4. Benefit. This ICA is:

(a) for the Parties' mutual benefit;

(b) an agreement for ongoing interdepartmental transfers of funds under Charter section B7.320, terminable only by the expiration of this ICA or by the Parties' agreement with Board of Supervisors approval by resolution and the Mayor's concurrence; and

(c) for the benefit of and enforceable by Developer and Developer Parties, Transferees and Vertical Developers as third-party beneficiaries to the extent of their rights and obligations under the Development Agreement and the DDA, subject to the limitations in Developer's Consent and further provided that neither the Port nor any Other City Agencies will be liable to Developer for damages.

1.5. Intent. The Parties intend for this ICA to provide the framework for cooperation between and among the Port and Other City Agencies with respect to review and approval of applications to the Port and Other City Agencies related to the Horizontal Improvements, including Subdivision Maps, Improvement Plans and Construction Permits for Horizontal Improvements. Accordingly, the Port and Other City Agencies have agreed to proceed expeditiously and use commercially reasonable efforts to comply with this ICA.

2. EFFECTIVE DATE; TERM

2.1. Effective Date. This ICA will become effective as of the Reference Date.

2.2. Term.

(a) Effect of DDA Termination. The term of this ICA will end on the date that the DDA Term expires including any extension of the DDA Term and any periods of Excusable Delay under the DDA or Development Agreement. Partial termination of the DDA as to any Phase or other portion of the Project Site will terminate this ICA and City Agencies' obligations under this ICA for the terminated portion of the Project Site. Notwithstanding the foregoing, if the DDA is terminated as to a Vertical Development Parcel and a Vertical DDA executed for said Vertical Development Parcel, the ICA Term will expire, extend or terminate as to all City Agencies' obligations associated with the development of said Vertical Development Parcel and its associated obligations, with the Vertical DDA.

(b) Ongoing Port Authority under ICA. In accordance with Charter section B7.320, the Port's authority to disburse funds under **Subsection 3.6(e)** (Distribution of Reimbursements) will continue until the Board passes and the Mayor approves a resolution terminating the Port's authority to make disbursements under Board of Supervisors Resolution No. _____.

3. COOPERATION

3.1. Agreement to Cooperate. The Other City Parties and the Port will aid each other, and the Other City Parties and the Port will cooperate with and amongst all City Agencies, to expeditiously and with due diligence implement the Project in accordance with the Project Requirements to undertake and complete all actions or proceedings reasonably necessary or appropriate to implement the Project. Except as otherwise provided in the Transaction Documents or Project Approvals, nothing in this ICA with regard to such cooperation obligates the City or the Port to spend any money or incur any costs except Other City Costs or Port Costs that Developer will, to the extent provided herein, reimburse under the DDA or administrative costs that Developer or Vertical Developers are obligated to reimburse through Administrative Fees.

3.2. City Approval. The City's approval and adoption of this ICA will be evidenced by the signatures of the Mayor, the Clerk of the Board of Supervisors, the Controller, the City Administrator, the Port and the Director of Public Works.

3.3. Consenting City Agencies.

(a) Written Consents. Based upon the City's approval and adoption of this ICA, as described in Section 3.2, each City Agency that has consented will comply with this ICA.

(b) Specific Agencies. The following City Agencies have, as of the date of this ICA signed this Agreement, a Consent or separate Transaction Document to implement the relevant portions of this ICA: (i) the Mayor's Office, including OEWD, MOHCD, and MOD; (ii) the General Services Agency, including San Francisco Public Works; (iii) the Port Commission; (iv) the San Francisco Municipal Transportation Agency; (v) the San Francisco Public Utilities Commission; and (vi) the Assessor, Controller, and Treasurer-Tax Collector (through the Tax Allocation MOU).

(c) Additional Agencies. During the course of the Project, the City and the Port, in consultation with Developer, may obtain the Consents of additional City Agencies not listed above. Each additional Consent will be substantially similar in form to the currently attached Other City Agency Consents and will be deemed to be attached to this ICA and effective when the additional Other City Agency delivers its executed Consent to the Port with copies to Public Works and Developer. Thereafter, Developer will be obligated to pay the Other City Costs of any additional consenting Other City Agencies.

3.4. Cooperation to Obtain Permits for Regulatory Agencies Other than City Agencies. Subject to this ICA and the MMRP, the City will cooperate with the Port and with reasonable requests by Developer to obtain Regulatory Approvals from any Regulatory Agency other than a City Agency that is necessary or desirable to effectuate and implement development of the Project in accordance with the Project Requirements. The City's commitment under this ICA is subject to the conditions listed below.

(a) Coordination. Developer consults and coordinates with applicable City Agencies with jurisdiction in Developer's efforts to obtain the Regulatory Approval.

(b) Continuing City or Port Obligations. If Regulatory Approvals include conditions that entail maintenance by or other obligations of the permittee or co-permittees that continue after the City (including the Port) accepts the completed Developer Improvements, then when the City (including the Port) accepts any Horizontal Improvements constructed by Developer that have continuing obligations under a Regulatory Approval, the City (including the Port) will take reasonably necessary steps at Developer's request to remove Developer as the named permittee or co-permittee from the Regulatory Approval if either: (i) the continuing obligations are designated solely as the City's or Port's responsibility under this ICA, the Transaction Documents, or related Project Approvals; or (ii) the City or Port in its sole discretion has agreed to accept sole responsibility for the obligations.

3.5. Other City Actions. The Mayor, Port and the Other City Agencies will take actions and engage in proceedings subject to this ICA on behalf of the City following reasonable requests by Developer, including those listed below.

(a) Trust Exchange. Assisting the Port in closing the Public Trust Exchange authorized by AB 418.

(b) Subdivision. Coordinating review and approval of proposed subdivision Tentative Maps, Final Maps, Improvement Plans and Subdivision Improvement Agreements, and permits for Horizontal Improvements.

(c) Street-Related Actions. Coordinating expeditious review of Developer's Streetscape Master Plan submittal, and instituting and completing proceedings for opening, closing, vacating, widening, or changing the grades of Public ROWs and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the 28-Acre Site, including any requirement to issue permits to abandon, remove, and relocate public utilities as allowed under a City franchise and city utilities (if applicable) within the Public ROW as necessary to carry out the Project in accordance the Project Requirements, except where City lacks such authority or required property rights.

(d) Construction Documents Review. Coordinating expeditious review of Construction Documents and issuance of construction and access permits for all stages of Horizontal Improvements within the time frames of this ICA and consistent with the standards set forth in the Project Requirements.

(e) Acceptance. Coordinating reviews and expeditiously taking timely actions to make construction completeness determinations or to notify Developer of deficiencies, to release security and, where applicable, to accept Horizontal Improvements from Developer in accordance with the San Francisco Subdivision Code and San Francisco Subdivision Regulations, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code. Each applicable Acquiring Agency shall accept full, complete, and functional Streets and Infrastructure as designed in conformance with the Subdivision Regulations and utility standards, and constructed in accordance with the project plans and specifications, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code. Without limiting the foregoing, the Port and Other City Parties acknowledge that the Infrastructure Plan sets forth standards for certain Street Segments that will require Developer to request exceptions to the Subdivision Code and the Subdivision Regulations. As of the DDA Reference Date, the Director of Public Works has not authorized such exceptions.

(f) State and Federal Assistance. Assisting the Port in pursuing, and reasonably considering requests from Developer to pursue, state and federal grants on behalf of the Project, below-market-rate loans, and other financial assistance or funding to assist in paying for Horizontal Improvements, Site Preparation, Associated Public Benefits and other community benefits. The City will allocate any state and federal assistance that the City receives, subject to a Board of Supervisors' resolution to accept and expend, for the Project to the Port for use in accordance with the DDA.

(g) Environmental Review. Complying with and implementing Mitigation Measures for which the City is responsible and assisting with evaluating and performing any subsequent environmental review to the extent required under CEQA Guidelines section 15162.

(h) Affordable Housing. Using its good faith efforts to: (i) select a qualified developer and operator for the Affordable Housing Parcel; (ii) assist the selected affordable housing developers with any application for affordable housing sources, including 9% LIHTCs under the City's geographic apportionment to the extent the applicants fail to secure an allocation of 9% LIHTCs from a statewide set-aside; and (iii) assist Vertical Developers of mixed-income residential development with funding applications.

(i) Historic Tax Credits. Using its good faith efforts to assist Developer in pursuing Historic Tax Credits and other incentives available to encourage the rehabilitation of Building 2, Building 12, and Building 21 in accordance with the Secretary's Standards.

3.6. Cost Recovery.

(a) Other City Agency Costs. In consideration of the benefits Developer will receive under this ICA, Developer will reimburse the Other City Agencies for costs

incurred to comply with this ICA as and to the extent provided in the *DDA § 19.1 (Port and City Costs)*, *DA § 4.4 (Payment of Planning Costs)*, and this Section. The DDA will control over any conflict with the DA and this ICA, and this ICA will control over any conflict with the DA regarding reimbursement of Other City Costs.

(b) Port and Other City Costs under ICA. The Parties agree that the City will incur all of the following to implement this ICA after the DDA Reference Date: (i) costs of the Project Coordinator if contracted by an Other City Agency; (ii) costs of Other City Agencies that sign this ICA or an attached Consent; and (iii) costs of additional Other City Agencies that later submit Consents that Developer countersigns. Developer will have no other obligation to reimburse costs incurred by any Other City Agency unless specified in another Transaction Document or required as part of an Administrative Fee.

(c) Compiled Other City Costs Statement. The Port will collect quarterly statements from Other City Agencies for costs incurred under this ICA, including work by Port staff and consultants. The Port will prepare and deliver a single combined quarterly statement of Other City Costs to the Port. The Port will prepare one Port Quarterly Report each quarter that shows the amount of Other City Costs and Port Costs billed by each City Agency.

(d) Port Quarterly Reports.

(i) Under *FP § 9.2 (Port Accounting and Budget)*, the Port must make reasonable efforts to provide a Port Quarterly Report of Other City Costs and Port Costs to Developer within six months after the date the costs are incurred. Other City Agencies agree to make reasonably diligent efforts to include all of their Project-related costs incurred in each quarterly statement.

(ii) If an Other City Agency fails to submit or to include any of its Project-related costs incurred in a quarterly statement provided to the Port, the Other City Agency will have a grace period, which it may exercise once within any 12-month period, to add the omitted Other City Cost to a Port Quarterly Report. No City Agency will have the right to recover any Other City Cost or Port Cost that is not included in a Port Quarterly Report within 12 months after the cost was incurred if the grace period is exercised, or within 6 months otherwise.

(e) Distribution of Reimbursements.

(i) Developer will reimburse Other City Costs and Port Costs by payments to the Port in accordance with *DDA § 20.2(f) (Reimbursements)*. Under this ICA, the Port will be responsible for disbursing payments to the Other City Agencies.

(ii) The DDA requires Developer and the Port to meet and confer in good faith to attempt to resolve any payment dispute. The Port will invite the affected Other City Agency to any meeting involving a dispute over its Other City Costs.

(iii) The Port will have no obligation to pay any Other City Agency for Other City Costs that Developer withholds from payment or that the Other City

Agency did not timely submit for payment under **Subsection 3.6(d)** (Port Quarterly Reports).

3.7. No Harbor Fund or General Fund Commitment. This ICA is not intended to, and does not, create any commitment of the Port's Harbor Fund or the City's General Fund in any manner that would violate the debt limitations under article XVI, section 18 of the California Constitution or of the City Charter, including Section 3.105 (Controller responsibility for General Fund), Section 8A.105 (Municipal Transportation Fund), Section 8B.121 (SFPUC financial assets), and Section B6.406 (Port Harbor Fund).

3.8. Procedures Required Under Applicable Laws. All City actions under this ICA will be taken subject to the limitations in the DA.

4. REVIEW PROCEDURES FOR STREETScape MASTER PLAN; IMPROVEMENT PLANS; INSPECTIONS; AND ACCEPTANCE.

4.1. Expeditious Processing. City Agencies will process expeditiously and with due diligence all submissions, applications and requests by Developer for Future Approvals, including all permits, approvals, agreements, plans, and other actions that are necessary to implement the Project, including without limitation, all Phase comments and reviews and Phase Approvals, schematic design reviews, phased Final Maps, subsequent Tentative Maps, subsequent Final Maps, Plan Sets, Construction Documents, Construction Permits, construction inspections and Finally Complete determinations, releases of security, acceptances and acquisition of Horizontal Improvements.

4.2. Review Periods. ICA **Schedule 1** provides a summary of review periods applicable to review of Improvement Plans by Other City Agencies under this ICA. The time periods in ICA **Schedule 1** will prevail over any other review time periods, provided that the time periods in this Section 4 will prevail over any other time periods in Schedule 1.

4.3. Improvement Plans for Horizontal Improvements-Generally.

(a) Coordination of Plan Reviews. Consistent with Port Commission approval of Schematic Drawings for Public Spaces and Port Executive Director approval of the Streetscape Master Plan for Public ROWs (as described in the DDA), the Port and the City will share responsibility for subsequent review of final Construction Documents for Horizontal Improvements for consistency with the Project Requirements, provided that: (i) For Public Spaces, Port will coordinate reviews by each Other City Agency, as applicable, and approve Improvement Plans for Horizontal Improvements in Public Spaces; and (ii) For Public ROWs, Public Works will coordinate reviews by City Agencies and for all other Horizontal Improvements (including review and approval of Master Utility Plans). Improvement Plans for Horizontal Improvements will generally be reviewed as part of the subdivision process.

(b) Port Review. Except to the extent incorporated into the Port Building Code, the Port will not review any Improvement Plans for compliance with any state or federal laws.

4.4. Processing of Improvement Plans and Issuance of Construction Permits.

(a) Consistency with Project Approvals. The Project Approvals include an Infrastructure Plan attached hereto as Attachment A that has been reviewed and approved by Public Works, SFPUC, SFFD, Port and SFMTA. The SFPUC will review and approve the final Master Utilities Plan in accordance with Section 4.12 hereof prior to approval of Improvement Plans. Accordingly, the applicable Permitting Agency will issue Construction Permits for the applicable Horizontal Improvements if the Permitting Agency and other reviewing Other City Agencies find that the Improvement Plans are consistent with the Project Requirements, including the Infrastructure Plan, Master Utilities Plans, Tentative Map Conditions of Approval and the City's technical specifications related to engineering documents under the Subdivision Regulations, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code.

(b) Exceptions and Design Modifications. Without limiting the foregoing, in connection with its review of Improvement Plans to be attached to Public Improvement Agreements, Public Works (and the Port, if required), in consultation with applicable Other City Agencies, will consider requests for exceptions and design modifications from the standards set forth under the Subdivision Regulations and will work together with Developer in good faith. In furtherance thereof, Developer shall identify in its Basis of Design Report the type of, geographic location of, and rationale for all exceptions that it intends to request. Developer shall provide Public Works and the Port the names of persons in all affected City Agencies Developer has asked to consider any such requests for exceptions. Within 90 days from the submittal of the Basis of Design Report, the Director will provide Developer with a written response on the proposed exceptions, identifying (i) exceptions that Developer may submit for approval as identified in the Basis of Design Report; (ii) modifications to proposed exceptions that Developer should make before a formal submittal of the exception request; (iii) preliminary conditions or criteria that proposed exceptions would be subject to; (iv) additional items that may require an exception not listed in the Basis of Design; and (v) exceptions that the Director is unlikely to recommend for approval. The City may request additional information as it reasonably determines necessary to make these determinations. The additional information may extend the time required to provide the written responses on the exceptions.

(c) Deferred Infrastructure. Developer has proposed to submit applications for Public Infrastructure that will include requests for Deferred Infrastructure. Developer's current concept for Deferred Infrastructure is described in Attachment C attached hereto for discussion purposes only. Certain aspects of the proposed Deferred Infrastructure concept in Attachment C would require an amendment to the current Subdivision Code and Subdivision Regulations or an exception granted by the Director of Public Works under Subdivision Code Section 1312. It is also contemplated that the Board of Supervisors and the Director of Public Works and may consider amending the Subdivision Code and the Subdivision Regulations in a manner that would address requests for Deferred Infrastructure described in Attachment C. The Port and Other City Parties will work in good faith to explore the proposed approach to Deferred Infrastructure subject to the following understanding:

(i) Nothing in this ICA obligates an Acquiring Agency to accept Deferred Infrastructure.

(ii) Developer and Port may apply for exceptions to the Subdivision Code and Subdivision Regulations, as may be amended.

(d) Plan Submittals. The DDA contemplates that the Project will be implemented in Phases. The Developer under each Phase (which may include Vertical Developers with respect to Deferred Infrastructure) will submit a set of Improvement Plans for each Component of Horizontal Improvements for review by Other City Agencies and Port (each, an “**Improvement Plan Submittal**”), as more particularly described in this Section 4.4. Each Improvement Plan Submittal shall be reviewed and approved by all applicable City Agencies and the Permitting Agency. Issuance of a Construction Permit shall be in accordance with this Section 4. The Improvement Plan Submittals shall be submitted for each Phase as one or more of the following:

(i) Demolition and Utility Relocation Plans, Mass Grading Plans, Ground Improvement Plans, and Shoreline Repair Plans (collectively, “**Site Preparation Plans**”) will be submitted as separate permit applications or may be submitted in a combined permit application, as deemed appropriate by Developer.

(ii) Horizontal Improvement Plans (collectively, the “**Horizontal Improvement Plans**”) will be submitted as follows:

- (1) Basis of Design Report, as generally described in ICA Attachment B;
- (2) First Submittal;
- (3) Second Submittal; and
- (4) Permit Set that will comprise the final Improvement Plans that will be attached to the Public Improvement Agreement.

Each submittal after the Basis of Design Report will incorporate comments and revisions required by the reviewing City Agencies. Each Horizontal Improvement Plan submittal may incorporate Demolition, Utility Relocation and Mass Grading Plans as appropriate.

(iii) Public Space Improvement Plans will be submitted as a single permit application for each park or may be combined with other parks, as appropriate (the “**Public Space Improvement Plans**”). Procedures for Port Commission review and approval of schematic design for Public Space Parcels is governed by Section 13.2(d) of the DDA.

(e) Pre-submittal Conference for Improvement Plans.

(i) Developer will request and participate in a pre-submittal conference with the Port (and the Permitting Agency, if not the Port) for the Basis of Design Report submittal at least fifteen (15) days prior to submittal. The Permitting Agency and Developer may hold a pre-submittal conference for each subsequent Horizontal Improvement Plan submittal as mutually agreed. The Permitting Agency will advise any affected Other City Agencies of, and invite them to participate in, any such pre-submittal conference.

(ii) The Permitting Agency will require Developer to provide any Other City Agencies choosing to participate with copies of materials to be discussed at any pre-submittal conference.

(f) Submittal of Improvement Plans for City Review. Prior to submittal each Improvement Plan Submittal, Developer will provide fourteen (14) days' notice to the Permitting Agency. Within three (3) business days after receipt, the Permitting Agency (or Developer, upon Permitting Agency authorization), will deliver such notice, and upon submittal of the applicable Improvement Plan Submittal, will deliver the Improvement Plan Submittal to all other applicable City Agencies. If Developer has concurrently submitted to the Port preliminary Acquisition Prices for Phase Improvements or Deferred Infrastructure in the form of AA Exh B (Preliminary Acquisition Prices) or Acquisition Price Updates under AA § 1.3 (Acquisition Prices) (as those terms are defined in the DDA), the Port will deliver copies of any price information affecting an Other Acquiring Agency's Horizontal Improvements along with the applicable Improvement Plan Submittal.

(g) Review of Improvement Plans. The Permitting Agency and each City Agency as applicable will review each Improvement Plan Submittal for consistency with the Project Requirements and Improvement plans previously approved. Each Other City Agency will provide comments to the Permitting Agency within 30 days of the Other City Agency's receipt of the Improvement Plan Submittal. Any Other City Agency that will be an Acquiring Agency for the applicable Phase Improvements or Deferred Infrastructure will also have the opportunity to state its concerns regarding the costs to operate and maintain Phase Improvements that it will acquire. Notwithstanding the foregoing, if Port and an Other City Agency disagree on their comments, then they shall work to resolve any differences in accordance with Section 4.4(h) below (Proposed Revisions). Notwithstanding the foregoing, if Developer submits the Site Preparation Plans as a combined set of two or more plan sets, the time for review will be extended by an additional 30 days.

(h) Delivery of Compiled Comments. Within three (3) business days after receipt of review comments from all Other City Agencies commenting on the applicable Improvement Plan Submittal (the "**Consolidated Response Date**"), the Permitting Agency will deliver all comments in a compiled format to Developer for response and revision as appropriate. Notwithstanding the foregoing, if the consultation process under Section 4.4(h) (Proposed Revisions) delays the Port's delivery of comments beyond the thirty-day period, then Developer may invoke Administrative Delay under the DDA as described in Section 4.4(o) below.

(i) Proposed Revisions. City Agencies may propose changes to the applicable Improvement Plan Submittal that do not conflict with Project Requirements or previously approved Improvement Plans. If the City Agencies propose changes to the applicable Improvement Plan Submittal, then upon request by Developer, the applicable City Agencies and Developer will promptly meet and confer in good faith to attempt to reach agreement on any such changes proposed for a period of not more than 30 days for the Basis of Design and First Submittal, and not more than 21 days for the Second Submittal and Permit Set, as any of the foregoing times may be extended by mutual agreement.

Coming out of this meet and confer process, Developer will incorporate revisions to the Site Preparation Plans and resubmit; incorporate revisions to Basis of Design Report into the First Submittal; incorporate revisions to the First Submittal into the Second Submittal; and incorporate revisions to the Second Submittal into the Permit Set. If Developer submits a revised Improvement Plan Submittal for any other type of Improvement Plan Submittal (*i.e.*, under Section 4.1(b)(i), (iii) and (iv)), then Port and all applicable Other City Agencies will have an additional 30 days for review after Developer resubmits the Improvement Plan Submittal with revisions.

Prior to each other resubmittal, Developer will provide at least fourteen (14) days advance notice of the resubmittal date. For each resubmitted Improvement Plan Submittal and for each subsequent Improvement Plan Submittal that incorporates revisions based on City Agency comments from the prior Improvement Plan Submittal, the Improvement Plan Submittal or the resubmittal will include: a "redline" comparison identifying all changes to the applicable Improvement Plan Submittal and a table of all comments and all responses to comments addressed in the applicable Improvement Plans Submittal or resubmittal (unless not required to be addressed, in which case the response will address the reasons for such conclusion). If the Improvement Plan Submittal or resubmittal is incomplete, inconsistent or fails to include such redlines and table, then the reviewing City Agencies will have forty five (45) days to review the applicable Improvement Plan Submittal or resubmittal.

(j) Consultation. The Permitting Agency and Other City Agencies agree to meet and attempt to resolve any differences over their respective comments within the following timeframes after delivery of comments to the Permitting Agency (City or Port) as applicable: (i) within 30 days for Basis of Design and the First Submittal of Horizontal Improvement Plans, and (ii) within 21 days for any other Improvement Plan Submittal.

(k) Review of Improvement Plans. Subject to the foregoing process and notwithstanding Government Code Section 66456.2(a), the Permitting Agency will approve, conditionally approve or disapprove the Permit Set for Horizontal Improvement Plans and each Improvement Plan Submittal under Section 4.4(c)(i), (iii) and (iv) above within 30 days after the later of the applicable Improvement Plan Submittal or submittal of revisions thereto in accordance with Section 4.4(h) (Proposed Revisions). All time periods for review and approval shall be subject to the Permit Streamlining Act (Cal. Gov't Code §§ 65920 et seq.), to the extent not inconsistent with the approval procedures set forth in this ICA, recognizing that times for approval hereunder may be shorter than those provided under the Permit Streamlining Act.

(l) SFPUC Approval of Master Utility Plans. Developer will submit Master Utility Plans to SFPUC for approval in accordance with Section 4.12 hereof.

(m) Resubmittal Upon Disapproval. If the Permitting Agency disapproves a Permit Set or any of the Improvement Plan Submittals under 4.4(c)(i), (iii) or (iv) above and Developer subsequently resubmits, the Permitting Agency, will have an additional thirty (30) days for review from receipt of the resubmittal (which period will include consultation with other City Agencies to the extent requested by the Permitting Agency).

This procedure will continue (except with respect to the Basis of Design) until the Permitting Agency approves the amended Improvement Plan Submittal.

(n) Review Standards. Unless otherwise approved by Developer in its sole discretion, neither the Permitting Agency nor any other City Agency will disapprove any Permit Set or Improvement Plan Submittal under 4.4(c)(i), (iii) or (iv) on the basis of any element that conforms to and is consistent and in compliance with the Project Requirements, the Regulatory Requirements, and the Permitting Agency's or City Agency's prior approvals; or (ii) impose new conditions that conflict with the Project Requirements, the Regulatory Requirements, or its prior approvals (provided, however, that the Parties acknowledge the City has discretion to impose conditions consistent with Regulatory Requirements). Any Permitting Agency denial, or the recommendation of denial of an approval by any other City Agency to the Permitting Agency approval shall include a statement of the reasons for such denial or recommendation of denial to the Permitting Agency. Permitting Agency will immediately notify Developer of any disapproval.

(o) Extension of Review Periods. All Improvement Plan Submittals will include detailed information, and the turnaround time for the Permitting Agency and other City Agencies', and City staff for review will depend in part on the amount of new information in and the quality of a submittal, including Developer compliance with the resubmittal requirements in Section 4.4(k) above. The Permitting Agency will, and after consultation with Developer, have the right to grant reasonable extensions of time for City Agencies to review submittals and provide comments.

(p) Failure to Provide Timely Responses. Any City Agency that fails to deliver its comments on an Improvement Plan Submittal within the comment periods under this ICA, unless extended under Subsection 4.4(m) (Extension of Review Periods), will at Developer's request take all reasonable measures necessary to ensure that the applicable Improvement Plan Submittal will be reviewed within a period of thirty (30) days from Developer's request.

(q) Excusable Delay. The Permitting Agency or any other City Agency's failure to act upon an Improvement Plan Submittal within the time frames specified in Section 4.1(i) or 4.1(j), subject to extension under **Subsection 4.1(m)** (Extension of Review Periods) shall be a basis for Administrative Delay under *DDA Article 4 (Performance Dates)*. In such case, Developer may claim Administrative Delay on a day-for-day basis from the required time for approval until the date of actual approval. For example, if the Outside Date in the Schedule of Performance for Commencement of Construction for Phase 1 is January 1, 2021 but the Port takes 60 days to approve the applicable Improvement Plan Submittal instead of the required 30 days, then the Outside Date for Commencement of Construction will be extended by an additional 30 days to January 31, 2021. In addition, delay in the time that the Permitting Agency actually delivers its comments to the Developer (whether caused by City Agency consultation or otherwise) will also be a basis for Administrative Delay under *DDA Article 4 (Performance Dates)* on a day-for-day basis until delivery of comments.

4.5. Inspections.

(a) Inspection Procedures. Before construction begins at the 28-Acre Site, each Acquiring Agency will be responsible for providing Developer with written procedures for inspection of Horizontal Improvements or Components that the Acquiring Agency will acquire. Inspection procedures must be consistent with the Project Requirements.

(b) Inspection Request. Developer may initiate an inspection to determine whether Horizontal Improvements or Components are ready for their intended use and have been completed substantially in conformity with the applicable Improvement Plans and applicable Regulatory Requirements by delivering to the respective Permitting Agency, an Inspection Request. The Chief Harbor Engineer or City Engineer, as applicable, for the applicable Permitting Agency will forward copies of the Inspection Request to any applicable Acquiring Agency within three business days after receiving the Inspection Request and promptly coordinate inspections.

(c) Inspection. Each Acquiring Agency will be responsible for conducting a requested inspection with due diligence and in a reasonable time given the scope of the inspection but not to exceed 21 days after the City Engineer or Chief Harbor Engineer, as applicable, has transmitted Developer's Inspection Request. Within five business days after conducting an inspection, each Acquiring Agency must provide notice to the Permitting Agency that the Horizontal Improvement or Component has been approved as inspected or deliver the Other Acquiring Agency's punch list of items to be corrected. The City Engineer (or Port Harbor Engineer, as applicable) will compile punch lists and deliver them to the Developer within 30 days after the City Engineer (or Chief Harbor Engineer) delivered the Inspection Request.

(d) SOP Compliance of Phase Improvements under the DDA. The DDA sets forth a process for the Chief Harbor Engineer to issue a SOP Compliance Determination when he finds that Developer has satisfied its construction obligations under the DDA, including the Schedule of Performance, for the construction of Phase Improvements or Components thereof. The Chief Harbor Engineer shall consult with Other City Agencies prior to issuing a SOP Compliance Determination, and each Other City Agency will respond within 30-days after request with any comments. After a 14-day cure period, if an Other City Agency fails to respond, the Chief Harbor Engineer, in his or her reasonable discretion, may issue the SOP Compliance Determination under the DDA.

(e) Notice to Developer. The Permitting Agency will compile any approvals and punch lists for the Horizontal Improvements and Components inspected and provide them to Developer within three business days after the Permitting Agencies receives inspection results from the Other Acquiring Agencies.

4.6. Standards and Procedures for Acceptance.

(a) Any acceptance of streets and other Infrastructure Improvements will occur according to the San Francisco Subdivision Code and San Francisco Subdivision Regulations, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code. The Acquiring Agency shall accept full, complete, and functional Streets and Infrastructure as designed in conformance with

the Subdivision Regulations and utility standards, and constructed in accordance with the project plans and specifications, subject to any exceptions that may be authorized by the Director of Public Works under the San Francisco Subdivision Code.

(b) From and after the effective date of this ICA, the City Agencies will meet and confer to consider other standards and procedures for acceptance of Horizontal Improvements, including individual utility systems that are subject to the Developer's potential post-acceptance maintenance, repair, and liability until the completion of all surface and subsurface improvements in the public right-of-ways in which the individual utility system is installed, and the City's acceptance of such improvements and public right-of-ways.

(c) The City Agencies agree to work in good faith to enter into a memorandum of agreement, within one hundred twenty (120) days of the submission of a complete First Submittal referenced in Section 4.4(d)(ii) herein, that will establish a framework for acceptance, ownership, maintenance and regulation of Horizontal Improvements to land owned or to be owned by the Other City Agencies or the Port ("Acceptance and Maintenance Memorandum of Agreement"). The following principles will guide the development of the Acceptance and Maintenance Memorandum of Agreement.

(i) The acceptance procedures will provide for diligent and expeditious processing of acceptance requests.

(ii) Permitting Agencies will introduce complete acceptance packages to the Board of Supervisors with a goal of final passage within six (6) months after the date of Developer's submission of a complete request.

(iii) City or Port acceptance of Horizontal Improvements, as applicable, will include obligation of the Developer to maintain the accepted Horizontal Improvements and all facilities and components therein, excepting only portions of the full Public ROW that are ready for their intended use and purpose and are Accepted by the City or of improvements that are to be maintained in accordance with the terms of an encroachment permit, as provided in the Development Requirements.

(iv) The City Agencies are entitled to seek additional information from the Developer. The additional information may extend the time frame required to finally execute the Acceptance and Maintenance Memorandum of Agreement.

(v) The Parties agree the Acceptance and Maintenance Memorandum of Agreement may be finally executed by the directors of the applicable City Agencies, unless otherwise required by the City Charter or other City law.

4.7. Streetscape Master Plan. The DDA requires the Developer to submit its final Streetscape Master Plan application to the Port within 90-days after the Reference Date thereof. Port staff will submit the Streetscape Master Plan application to applicable City Agencies, including Public Works and SFMTA. Port, and each Other City Agency, will review the

Streetscape Master Plan for consistency with the DA Requirements. Each Other City Agency will provide any comments on the submittal to the Port within 30 days from the Other City Agency's receipt of the submittal.

4.8. Vertical Development- Consistency Review. City Agencies will, as necessary and appropriate, coordinate reviews of Improvement Plans for Horizontal Improvements with Construction Documents for Vertical Improvements (to the extent not already addressed in Improvement Plans for Deferred Infrastructure), including Back-of-Curb Infrastructure, utility laterals and associated facilities serving the Vertical Improvements and connection to Horizontal Improvements, to ensure consistency, to avoid development delays, to safeguard public safety, and to protect existing infrastructure.

4.9. Other Assistance. Public Works will provide additional engineering and construction management services for the Project if requested by the Port. Public Works agrees that the Port may establish work orders to obtain Public Works staff review of Improvement Plans on behalf of the Port under the Port Director's direction. If it does so, Public Works staff will be obligated to provide comments to the Port in time to permit timely transmittal to Developer.

4.10. Moratorium Streets. Section 2.4.21 of the Public Works Code provides that "Public Works shall not issue any permit to excavate in any moratorium street; provided, however, that the Director of Public Works, in his or her discretion, may grant a waiver for good cause." A moratorium street is defined as any block that has been reconstructed, repaved, or resurfaced in the preceding 5-year period. Public Works acknowledges that the Project will involve the construction of Public ROWs before adjacent Vertical Improvements are built, and that those Vertical Improvements may require street excavation for Deferred Infrastructure and to connect Deferred Infrastructure to previously-built Horizontal Improvements in the Public ROW. Public Works agrees that, to the extent that Public Works Code Section 2.4.21 is applicable and construction of Vertical Improvements will require excavation within adjoining City-accepted public streets within the 5-year moratorium period, the Director of Public Works will consider granting a requested waiver, subject to reasonable conditions to protect public health, safety, and welfare, appropriate restoration requirements (which may be required under future amendments to the San Francisco Municipal Code or applicable regulations), and recovery of its actual costs incurred, on a time and materials basis.

4.11. SFMTA Matters.

(a) **Prior SFMTA Review.** The Permitting Agency will not issue any Construction Permit for Horizontal Improvements that include or should include Transportation Infrastructure or Transportation-Related Mitigation Measures unless SFMTA has previously reviewed and approved applicable Improvement Plans for compliance with SFMTA requirements, consistent with the Development Requirements and in accordance with the procedures governing Improvement Plans in this Section 4, and has determined compliance with all applicable Transportation-Related Mitigation Measures consistent with the MMRP.

(b) **Cooperation.** The Permitting Agency and Developer, and Vertical Developers, as applicable, will work collaboratively with SFMTA to ensure that Transportation Infrastructure and Transportation-Related Mitigation Measures are discussed as early in the review process as possible and that the Port, Public Works, and SFMTA act in concert with respect to these matters.

4.12. SFPUC Matters. The following will apply to SFPUC Utility Infrastructure and Utility-Related Mitigation Measures.

(a) **AWSS.** Developer will submit with each Basis of Design Report its AWSS Plan for the associated Horizontal Improvements. SFPUC will diligently and timely perform modeling required to support the proposed AWSS design.

(b) **Stormwater Master Plan.** Developer will submit a Stormwater Master Plan (“**Stormwater Master Plan**”) with each Basis of Design Report. Before Port or any City Agency is required to review any Improvement Plan Submittal following the first Basis of Design Report, SFPUC (through its General Manager) must review the final Stormwater Master Plan submitted by Developer. SFPUC shall diligently and expeditiously review the Stormwater Master Plan (or any subsequent revisions thereto).

(c) **SFPUC Approval of Master Utilities Plans.** Developer must submit final Master Utility Plans prior to submitting a Basis of Design Report. Before Port or any City Agency is required to review any Improvement Plan Submittal following the first Basis of Design Report, SFPUC (through its General Manager) must review the final Master Utilities Plans submitted by Developer. SFPUC shall diligently and expeditiously review the Master Utilities Plans (or any subsequent revisions thereto).

(d) **SFPUC Review of Improvement Plans.** The Permitting Agency will not issue any Construction Permit for Horizontal Improvements that include SFPUC Utility Infrastructure or SFPUC Utility-Related Mitigation Measures unless SFPUC has reviewed and commented on applicable Improvement Plans for compliance with SFPUC requirements consistent with the Development Requirements, including the Infrastructure Plan and Master Utility Plans, in accordance with procedures governing Improvement Plans in Section 4 hereof.

(e) **Public Power.** In accordance with Chapter 99 of the San Francisco Administrative Code, the SFPUC has performed a feasibility study and has determined that it will provide electric power to the project. SFPUC will work with the Developer to provide temporary construction and permanent electric services pursuant to its Rules and Regulations for Electric Service.

(f) **Cooperation.** The Permitting Agency, Developer, and Vertical Developers, as applicable, will work collaboratively with each Other City Agency to ensure that SFPUC Utility Infrastructure and SFPUC Utility-Related Mitigation Measures are discussed as early in the review process as possible and that the Port, Public Works, and the SFPUC act in concert with respect to these matters.

4.13. Role of SFFD. The following shall apply to Fire Safety Infrastructure.

(a) **Prior SFFD Review.** The Permitting Agency will not issue any Construction Permit for Horizontal Improvements that include or should include future Fire Safety Infrastructure unless the SFFD has previously reviewed and approved applicable Improvement Plans for compliance with SFFD requirements in accordance with procedures governing Improvement Plans in Section 4 hereof. Neither Public Works nor the Port shall approve any Construction Documents that include plans and specifications for Fire Safety Infrastructure without the SFFD Fire Chief's, or Chief's designee's, prior approval.

(b) **Cooperation.** The Permitting Agency, Developer, and Vertical Developers, as applicable, will work collaboratively with SFFD to ensure that Fire Safety Infrastructure is discussed as early in the review process as possible and that Public Works, the Port, and SFFD act in concert with respect to these matters.

5. PROCESS FOR REVIEW AND APPROVAL OF SUBDIVISION MAPS

5.1. Subdivision Process. The Subdivision Map Act, the Subdivision Code, and the Subdivision Regulations shall govern the Subdivision Map process. Attachment D describes Developer's proposed mapping process for the Project. Attachment D is a draft for discussion purposes only.

6. OTHER COORDINATION

6.1. Assessor's Office. Upon the request of Developer, Port and Developer shall meet and confer with the County Assessor regarding the use and retention of dedicated County Assessor staff (on a full or part-time basis) or third party consultant to facilitate the prompt annual assessment of real property in the Project Site. Upon the mutual agreement of Developer, the County Assessor and the Port regarding the cost, duration and scope of such work to be paid by Developer, the County Assessor shall implement such agreement and make such staff available for property reassessments within the Project Site.

6.2. Role of Horizontal Improvements Project Coordinator. Developer and the City may agree to utilize a third-party professional (the "Project Coordinator") to coordinate with Developer, the Other City Agencies, and the Port to fulfill efficiently, expeditiously and with due diligence their respective obligations under this ICA. The Project Coordinator's scope of work includes but is not limited to facilitation of permit applications including plan review and revisions, providing recommendations for acceptance of parks and open space, providing recommendations on the issuance of the Port's Determination of Completion in accordance with the DDA and pursuant to the Schedule of Performance, and facilitation of acquisition and reimbursement under the Acquisition Agreement. The Port shall contract with the Project Coordinator, and may include associated actual costs incurred as part of Port Costs, on the conditions listed below.

6.3. Annual Review. At least 60 days before retaining or renewing the contract of any Project Coordinator, the Port, and Developer will meet and confer about the identity, cost, duration, and scope of work of the third-party professional to ensure that contracted services are used in an efficient manner and avoid redundancies.

6.4. Contract Terms. Contracts with the Project Coordinator: (i) will, unless agreed otherwise by the Parties with Developer Consent, specify a maximum annual fee for the scope of

work, subject to modification if work on Developer submittals exceeds the anticipated scope of work; (ii) may be for any term to which the Parties agree; (iii) must provide for an annual review of contracted services; and (iv) must be terminable upon notice.

6.5. Termination. Developer, the Port, or Other City Agencies may request the termination of the Project Coordinator's contract by delivering a written statement of the basis for its request to the other Parties. Before the Port will be obligated to terminate the contract, Developer, the Port, and Other City Agencies must meet and confer on whether a revised scope of work would address the issues adequately and, if not, whether implementing procedures for securing a contract with a satisfactory replacement Project Coordinator is appropriate. If the contract is terminated, Developer and the Port will meet and confer to revise the timelines for Port and Other City Agencies' review and processing of Developer submittals under this ICA in light of available staffing.

6.6. Access to Other City Property. If necessary for the Project, each Other City Agency agrees to license temporarily any property under its jurisdiction to Developer on City standard and commercially reasonable terms. Developer access will be deemed necessary if it authorizes Developer to investigate adjacent environmental conditions, undertake environmental response programs, undertake Mitigation Measures, construct Horizontal Improvements upon, or otherwise use the property to implement the Development Requirements. Licenses will include indemnification and security provisions in keeping with the City's standard.

7. DEFAULTS AND REMEDIES.

7.1. Meet and Confer. Before a City Agency delivers a notice under **Section 7.2** (Notice of Default), the concerned City Agencies (including the Port) will provide notice of the alleged default and the steps needed to resolve it. The concerned City Agencies must attempt to resolve the dispute within ten days of the date of such initial notice.

7.2. Notice of Default. Any concerned City Agency may deliver a notice to any Other City Agency alleging a default under this ICA if not resolved within the 10-day period under **Section 7.1** (Meet and Confer). The notice of default must state with reasonable specificity the nature of the alleged ICA Default, the provision(s) under which the ICA Default is claimed to arise, and the manner in which the ICA Default may be cured.

7.3. Cure. The defaulting City Agency must cure the default within 30 days after the notice is delivered.

7.4. Consequences of Default.

(a) No Cost Recovery. A defaulting City Party will not be entitled to recover any of its costs from the date the notice under **Section 7.2** (Notice of Default) is delivered until the default is cured.

(b) Developer Action. The affected Developer Party may file an action to obtain a remedy for the default, including specific performance by the City Agency. Nothing in this Section requires an affected Developer Party to postpone instituting an injunctive proceeding if it believes in good faith that postponement will cause it irreparable harm.

(c) ICA Remains in Effect. The Parties acknowledge that termination is not a remedy under this ICA.

7.5. No Monetary Damages.

(a) No Interagency Damages. Except with respect to **Section 3.6** (Cost Recovery), the Parties have determined that monetary damages are inappropriate and that it would be extremely difficult and impractical to fix or determine the actual damages to a Party as a result of any default and that equitable remedies, including specific performance, but not damages are the appropriate remedies for enforcement of all other provisions of this ICA. The Parties would not have entered into this ICA if it created liability to any other Party for damages under or with respect to implementing this ICA.

(b) Covenant and Waiver. The Parties have agreed that no City Agency will be liable in damages to any other City Agency, and each City Agency covenants not to sue for or claim any damages against any other City Agency and expressly waives its right to do so: (a) for any default; or (b) arising from or connected with any dispute, controversy, or issue regarding the application, interpretation, or effect of this ICA. Developer's corresponding covenant and waiver are in Developer's Consent to this ICA.

(c) Developer's Statutory Rights. Nothing in this ICA limits a Developer Party's rights or remedies under any applicable Regulatory Requirement governing the application, review, processing, or permitting of Improvements, including the Permit Streamlining Act (Cal. Gov't Code §§ 65920 et seq.).

7.6. Attorneys' Fees. In event of any dispute or any legal action or other dispute resolution mechanism to enforce or interpret any provision of this ICA, each Party will bear its own attorneys' fees and costs, whether or not one Party prevails.

7.7. Developer Breach. If a Developer Party commits an Event of Default or is in Material Breach of its obligations under the DDA or other Transaction Document, including failure to pay Other City Costs or Port Costs (following expiration of any notice and cure periods), any City and Port obligations under this ICA with respect to the defaulting Developer Party will be suspended and will not be reinstated until the Developer Party cures the applicable Event of Default or Material Breach. But an Event of Default or a Material Breach by a Developer Party under the DDA will not relieve the City or the Port of any obligation under this ICA that arose before the Event of Default or Material Breach (except with respect to terminated portions of the DDA), or that relates to the Developer Party's obligations under the DDA or to any other Developer Party. This Section does not limit any other Port rights or remedies under the DDA, or any other City rights or remedies under the DA or applicable Regulatory Requirements.

8. GENERAL PROVISIONS.

The following apply to this ICA in addition to the provisions in the Appendix Section A.

8.1. Notices. Notices given under this ICA are governed by *App ¶ A.5 (Notices)*.

(a) Addresses for Notice. Addresses for notices given under this ICA are listed below and in the Consents. Developer and any City Agency may change its notice address by giving notice of the change in the manner provided above at least 10 days before the effective date of the change.

Address for City: Office of Economic and Workforce Development
City and County of San Francisco
City Hall, Room 448
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Attn: Director

Telephone No.:

Facsimile No.:

Email:

With a copy to: San Francisco Public Works
City Hall Room 348
San Francisco, California 94103

Attn: Director

Telephone No.:

Facsimile No.:

Email:

Address for Port: Port of San Francisco
Pier 1
San Francisco, California 94105

Attn: Chief Harbor Engineer

Telephone No.:

Facsimile No.:

Email:

With a copy to (for
matters affecting
Transportation
Infrastructure or
Transportation-related
Mitigation Measures
only):

San Francisco Municipal Transportation Agency
One South Van Ness Avenue
7th Floor
San Francisco, California 94103

Attn: Director

Telephone No.:

Facsimile No.:

Email:

With a copy to (for matters affecting Utility Infrastructure or Utility-related Mitigation Measures only):

San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, California 94102

Attn: Director

Telephone No.:

Facsimile No.:

Email:

With a copy to:

Office of the City Attorney
Port of San Francisco
Pier 1
San Francisco, CA 94111

Attn: Port General Counsel

Telephone No.:

Facsimile No.:

Email:

Office of the City Attorney
City Hall, Room 234
1 Carlton B. Goodlett Place
San Francisco, CA 94102

Attn: Public Works General Counsel

Telephone No.:

Facsimile No.:

Email:

(b) Courtesy Copies. Until the Port has issued a Certificate of Completion for all Horizontal Improvements for the Project, the Parties agree to provide courtesy copies to Developer on behalf of all Developer Parties of any notices that either the any City Agency gives to any other City Agency under Section 7.2 or 8.2(c) of this ICA at the same time and in the same manner as provided above, at the addresses listed below. Failure to give Developer a copy of any notice given under this Section will not affect the validity or effective date of the notice.

8.2. Amendments to ICA, Infrastructure Plan and Transportation Plan.

(a) Writing Required. This ICA may be amended only by a written instrument executed by the Other City Parties and the Port, with the consent of an authorized representative of Developer, which may not be unreasonably withheld, conditioned, or delayed.

(b) City Authority. The Mayor and the Port Director are authorized consistent with a Developer request, or if not a Developer requested amendment subject to obtaining the Developer's prior written consent, to consent to any amendment to this ICA after consultation with the directors or general managers of any affected City Agencies, subject to the following:

(c) Required Consents for ICA Changes. The Mayor and the Port Director must obtain the written consent of any City Agency that is a signatory or consenting party to this ICA to the extent that such change materially affects the applicable City Agency's obligations or property. Subject to the required consents listed below in this Subsection, the determination as to whether any proposed amendment is material will be made in accordance with Subsection 8.2(d). More specifically:

(i) DPW must give its prior written approval to any substantive ICA amendment affecting Public ROWs or the processing of Subdivision Maps.

(ii) SFMTA must give its prior written approval to any substantive ICA amendment affecting Transportation Infrastructure or Transportation-Related Mitigation Measures. For the avoidance of doubt, SFMTA must give its prior approval to any material amendments to the Infrastructure Plan that affect Transportation Infrastructure and any material amendments to the Transportation Plan.

(iii) SFPUC must give its prior written approval to any ICA amendment affecting SFPUC Utility Infrastructure or Utility-Related Mitigation Measures.

(iv) SFFD must give its prior written approval to any substantive ICA amendment affecting Fire Safety Infrastructure.

(d) Material Amendments. Any ICA change that would materially: (A) increase the risk of a negative impact on the City's General Fund, as determined on behalf of the Mayor by the Controller; (B) materially increase a City Agency's obligations, or materially lessen the primary benefits to the City, as determined by the Mayor; or (C) have a negative impact on City property, as determined by the City Engineer, will be deemed a material amendment and will require approval by the Port Commission, the Mayor and the affected Other City Agencies consenting to this ICA as to matters within their respective exclusive jurisdiction.

(e) Infrastructure Plan and Transportation Plan Amendments. Amendments to the Infrastructure Plan and Transportation Plan will be processed and approved in accordance with Sections 8.2(a), (b) and (c) above.

(f) Minor Deviations.

(i) Improvements Plans. Minor deviations in a set of Improvement Plans from the Development Requirements, including the Infrastructure Plan and Master Utility Plans may be approved by the Permitting Agency with exclusive jurisdiction over the affected plan, with the consent of any Other affected City Agency, provided the deviation will not affect the overall system, its configuration and performance, is otherwise compatible with the intent of the

Infrastructure Plan and does not otherwise qualify for treatment as a material plan amendment under Section 8.2(b)(ii).

(ii) Review Schedule. Requests for approval of minor deviations will be reviewed as part of and within the same review time frames as the applicable set of improvement plans.

8.3. Invalidity.

(a) Invalid Provision. If a final court order finds any provision of this ICA invalid or inapplicable to any Person or circumstance, then the invalid or inapplicable provision will not affect any other provision of this ICA or its application to any other Person or circumstance, and the remaining portions of this ICA will continue in full force and effect.

(b) Countervailing Law. If any applicable State or federal law prevents or precludes compliance with any material provision of this ICA, the Parties agree to modify, amend, or suspend this ICA to the extent necessary to comply with law in a manner that preserves to the greatest extent possible the intended benefits of this ICA to each of the Parties and to Developer.

(c) Right to Terminate. A Party may terminate this ICA on notice to the other Parties if this ICA as amended or suspended under Subsection 8.3(a) (Invalid Provision) or (b) (Countervailing Law) would: (i) be unreasonable or grossly inequitable under all of the circumstances or would frustrate this ICA's fundamental purposes; or (ii) deprive the City or the Port of the substantial benefits derived from this ICA or make performance unreasonably difficult or expensive. Following termination, the Parties, Developer, and Developer Parties will have no further rights or obligations under this ICA.

8.4. Successors and Assigns; Third-Party Beneficiary. This ICA is for the benefit of and binds the City's and the Port's respective successors and assigns. Developer and Developer Parties are intended third-party beneficiaries of this ICA. Except for Developer and Developer Parties, this ICA is for the exclusive benefit of the Parties and not for the benefit of any other person and may not be deemed to have conferred any rights, express or implied, upon any other person.

8.5. Further Assurances. The Port and the City each agree to take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents necessary or appropriate to achieve the purposes of this ICA.

8.6. Attachments. The attachments listed below are incorporated into and are a part of this ICA.

ICA Definitions Appendix

Developer's Consent

Consent of San Francisco Municipal Transportation Agency

Consent of San Francisco Public Utilities Commission

ICA Attachment A: Infrastructure Plan

- ICA Attachment B: Basis of Design (Draft – For Discussion Purposes Only)
- ICA Attachment C: Developer’s Deferred Infrastructure Concept (Draft – For Discussion Purposes Only)
- ICA Attachment D: Developer’s Proposed Pier 70 Mapping Process (Draft – For Discussion Purposes Only)

[Remainder of page intentionally left blank.]

This ICA was executed and delivered as of the last date set forth below.

CITY:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

PORT:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the San Francisco Port Commission

By: _____
Edwin M. Lee
Mayor

Date: _____

By: _____
Elaine Forbes
Executive Director

Date: _____

By: _____
Angela Calvillo
Clerk of the Board

Date: _____

Authorized by Port Resolution No. **XXXX**.

By: _____
Ben Rosenfield
Controller

Date: _____

By: _____
Naomi Kelly
City Administrator

Date: _____

By: _____
Mohammed Nuru
Director of Public Works

Date: _____

Authorized by Board Resolution No. **XXXX**.

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
John Malamut
Deputy City Attorney

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

ICA DEFINITIONS APPENDIX

“**Acquiring Agency**” means the City Agency (the Port, SFPUC, or Public Works) that will acquire Developer Improvements under the Acquisition Agreement and accept the Developer Improvements as required under law.

“**Acquisition Agreement**” means the Acquisition and Reimbursement Agreement between Developer and the Port in the form of FP Exh A that lists Developer Improvements that an Acquiring Agency will purchase from Developer, establishes the Acquisition Prices of Developer Improvements, and provides forms and procedures for Developer to request inspection of and payment for Developer Improvements.

“**Administrative Delay**” means an event of Excusable Delay caused when:

- (i) a Regulatory Agency fails to act on a Developer request or application within a reasonable time under its standard practices or as otherwise specified in the ICA, the Development Agreement, or the DDA; or
- (ii) an appeal body or court determines that a Regulatory Agency’s act or failure to act on an application was improper following a challenge by Developer or a Vertical Developer Affiliate.
- (iii) for any matter that requires the execution and delivery of a Vertical DDA or Ground Lease (*i.e.*, for the Arts Building and Historic Buildings 2 and 12 under **DDA § 7.12** (Historic Buildings 2 and 12), Developer has shown a good faith willingness to enter into the applicable agreement substantially in the forms attached to the DDA and in accordance with all other terms and conditions, but Port has delayed or failed to proceed with the execution and delivery of the applicable Vertical DDA or Ground Lease.

“Administrative Delay” excludes any delay caused by Developer’s failure to meet any Outside Date due to its failure to submit timely all required and requested information supporting a request or application.

“**Administrative Fee**” means:

- (i) a fee imposed citywide (or portwide, for Port fees) in effect and payable when a developer submits an application for any permit or approval, intended to cover only the estimated actual costs to the City or the Port of processing the application, addressing any related hearings or other actions, and inspecting work under the permit or approval; and
- (ii) amounts that Developer or a Vertical Developer must pay to the City or the Port under any Transaction Document to reimburse the City or the Port for its administrative costs in processing applications for any permits or approvals required under the Development Requirements.

“Administrative Fee” excludes any Impact Fee or Exaction.

“**Affiliate**” when used in reference to a specified person, means any other person that directly or through intermediaries controls, is controlled by, or is under common control with the specified person.

“**Affordable Housing Parcel**” means a Development Parcel on which 100% affordable housing might be constructed under the Affordable Housing Plan.

“**AHP**” is an acronym for the Affordable Housing Plan (**DDA Exh B2**).

“**Applicable Laws**” means, individually or collectively, any law that applies to development, use, or occupancy of or conditions at the 28-Acre Site.

“**Assessor**” means the Assessor-Recorder of the City and County of San Francisco.

“**Basis of Design**” is defined in ICA Attachment B.

“**CEQA**” is an acronym for the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000-21189.3).

“**CEQA Findings**” means findings adopted by the Planning Commission, the Port Commission, and the Board of Supervisors, and any Other City Agency under CEQA Laws in connection with the Project Approvals.

“**CEQA Guidelines**” means the California Guidelines for Implementation of CEQA (Cal. Admin. Code §§ 15000-15387).

“**CEQA procedures**” means Administrative Code chapter 31.

“**Chief Harbor Engineer**” means the Port’s Deputy Director, Engineering, or his designee.

“**City**” means the City and County of San Francisco, a political subdivision and municipal corporation of the State of California.

“**City Agency**” means any public body or an individual authorized to act on behalf of the City in its municipal capacity, including the Board of Supervisors or any City commission, department, bureau, division, office, or other subdivision, and officials and staff to whom authority is delegated, on matters within the City Agency’s jurisdiction.

“**City Engineer**” means the person designated by the Director of Public Works pursuant to the Administrative Code.

“**City Party**” means the Port and the City and their respective Agents, including commissioners, supervisors, and other elected and appointed officials.

“**citywide**” means all real property within the territorial limits of San Francisco, not including any property owned or controlled by the United States or the State that is exempt from City Laws

“**Commence Construction**” means the start of substantial physical construction as part of a sustained and continuous construction plan.

“**Component**” means a discrete portion or phase of a Horizontal Improvement that has an estimated construction cost of over \$1 million.

“**Construction Permits**” means:

- (i) for Horizontal Improvements, any permit that Developer must obtain from the Port or Other City Agencies before Commencement of Construction at the 28-Acre Site; and
- (ii) for Vertical Improvements, building permits or site permits and addenda.

“**Controller**” means the Controller of the City and County of San Francisco.

“**Conveyance Agreement**” or “Conveyance Agreements” as the case may be, means a VDDA, Ground Lease, grant deed, quitclaim deed or any implementing documents (such as recorded covenants) used to convey Development Parcels to Vertical Developers under the DDA.

“**DA**” is an acronym for the Development Agreement.

“**DA Ordinance**” means Ordinance No. XXXX adopting the Development Agreement, incorporating by reference the General Plan Consistency Findings, and authorizing the Planning Director to execute the Development Agreement on behalf of the City.

“**DDA**” or “**Disposition and Development Agreement**” is an acronym for the Disposition and Development Agreement between the Port and Developer specifying the terms and conditions for Developer’s master development of the 28-Acre Site.

“**DDA Reference Date**” means the date on which the DDA is fully executed.

“**DDA Term**” means the period beginning on the DDA Reference Date and ending when the DDA expires by its own terms or by early termination.

“**Deferred Infrastructure**” means the Horizontal Improvements included with a set of approved and permitted improvement plans, which only upon agreement and approval by the permitting entity and in compliance with all applicable laws, will be constructed, completed and/or accepted separate from the rest of such permitted Horizontal Improvements. Deferred Infrastructure may also include Phase Improvements within “Deferred Infrastructure Zones”, in accordance with Section 15.4(b) of the DDA.

“Deferred Infrastructure” excludes utility improvements and fixtures customarily installed as part of a Vertical Improvement.

“**Design Controls**” means the Pier 70 Design for Development approved by the Port Commission and the Planning Commission, as amended from time to time.

“**Developer**” means FC Pier 70, LLC, a Delaware limited liability, and its successors and assigns.

“**Developer Mitigation Measure**” means any Mitigation Measure in the MMRP (**DDA Exh B5**) that is to be performed by Developer or a Vertical Developer or that is otherwise identified as the responsibility of the “owner” or the “project sponsor.”

“**Developer Party**” means Developer and its direct and indirect partners, members, shareholders, officers, and Affiliates, individually or collectively.

“**Development Agreement**” means the agreement that the City entered into with Developer under Chapter 56 and the Development Agreement Statute between specifying the entitlement rights that the City agreed to vest in Developer for development of the 28 Acre Site by adoption of the DA Ordinance.

“**Development Parcel**” means a buildable parcel in the SUD, including each Option Parcel.

“**Director of Public Works**” means the Director of San Francisco Public Works.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the United States Department of Labor, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the Water Board, the California Division of Occupational Safety & Health, Department of Industrial Relations, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, SFFD, SFPUC, the Port, and any Other Regulator now or later authorized to regulate Hazardous Materials.

“Event of Default” means a Breaching Party’s failure to cure a noticed breach within the cure period specified in **DDA § 11.2** (Events of Default by Developer), **DDA § 11.3** (Events of Default by the Port), or any other Transaction Document, as applicable.

“Existing City Laws and Standards” means the (i) the Project Approvals; (ii) the Transaction Documents; and (iii) all other applicable City Laws in effect on the Effective Date of the Development Agreement.

“Final Map” means a final Subdivision Map meeting the requirements of the Subdivision Code, Subdivision Regulations (subject to such exceptions or revisions as may be approved by the Director of Public Works under the San Francisco Subdivision Code) and the Map Act.

“Final Transfer Map” means a Final Map approved by Public Works for purposes of financing and conveyancing only.

“First Submittal” is defined in **Section 4.4(c)(ii)**. **“Future Approval”** means any Regulatory Approval required after the Reference Date to implement the 28-Acre Site Project or begin Site Preparation or Commence Construction of Improvements.

“General Plan” means goals, policies, and programs for the future physical development of the City, as adopted by the Planning Commission and approved by the Board of Supervisors, taking into consideration social, economic, and environmental factors.

“General Plan Consistency Findings” means findings made by the Planning Commission [listed in the Project Approvals] that the Project as a whole and in its entirety is consistent with the objectives, policies, general land uses, and programs specified in the General Plan and the planning principles in Planning Code section 101.1.

“Ground Lease” means a contract in the form of **DDA Exh D2** by which the Port will convey a leasehold interest in an Option Parcel to a Vertical Developer.

“Historic Building” means any one of the historic structures in the 28 Acre Site known as Building 2, Building 12, and Building 21, each of which is classified as a significant contributing historic resource to the Union Iron Works Historic District.

“Historic Tax Credits” means tax credits received under the Historic Preservation Tax Incentives Program jointly administered by the National Park Service and the State Historic Preservation Offices, codified at Tax Code section 47.

“Horizontal Improvements” means capital facilities and infrastructure built or installed in or to serve the 28-Acre Site, including Site Preparation, Shoreline Improvements, Public Spaces, Public ROWs, Utility Infrastructure and Deferred Infrastructure.

“Horizontal Improvements” excludes Vertical Improvements.

“**Horizontal Improvement Plans**” as defined in **Section 4.4(c)(ii)** of the ICA

“**ICA**” means this Memorandum of Understanding Regarding Interagency Cooperation.

“**Impact Fees and Exactions**” as defined in the DA.

“**Improvements**” means all physical changes required or permitted to be made to the 28-Acre Site under the DDA, including Horizontal Improvements and Vertical Improvements.

“**Improvement Plans**” means improvement and engineering plans (but not Master Utilities Plans) meeting applicable City and Port specifications for the applicable Horizontal Improvements.

“**Improvement Plan Submittal**” is defined in **Section 4.4(c)**.

“**Infrastructure Plan**” means the Infrastructure Plan attached as **DDA Exh B1**, including the Streetscape Master Plan and each Master Utility Plan when later approved by the applicable City Agency.

“**Inspection Request**” means Developer’s written request that the Chief Harbor Engineer or City Engineer, as applicable, arrange for the applicable Acquiring Agency to inspect Horizontal Improvements or Components for compliance with Project Requirements and City Laws.

“**Map Act**” means the Subdivision Map Act of California (Calif. Gov’t Code §§ 66410-66499.37).

“**Master Lease**” means a lease for most of the 28-Acre Site in the form of **DDA Exh D1** that allows Developer to take possession of the described premises and construct Horizontal Improvements on the 28-Acre Site under the DDA.

“**Master Utilities Plan(s)**” means any of the following plans for Utility-Related Infrastructure:

- (i) Low Pressure Water Master Plan;
- (ii) Non-Potable Water System Master Plan;
- (iii) Grading and Combined Sewer System Master Plan;
- (iv) Dry Utilities Joint Trench Master Plan; and
- (v) Master Electrical Infrastructure Plan.

“**Memorandum of Understanding (Assessment, Levy, and Allocation of Taxes)**” is an interagency agreement between the City, through the Assessor, the Controller, the Treasurer-Tax Collector, and the Port establishing procedures for assessing Taxable Parcels, levying Mello-Roos Taxes, allocating Mello-Roos Taxes to each CFD, allocating Tax Increment to the IFD, allocating Housing Tax Increment to the IRFD, and related matters, as authorized by Port Resolution No. XXXX, the MOU Resolution and Board of Supervisors Resolution No. XXXX under Charter section B7.340.

“**Mitigation Measure**” means any measure identified in the MMRP required to minimize or eliminate material adverse environmental impacts of the Project and any additional measures necessary to mitigate adverse environmental impacts that are identified through the CEQA process for any Future Approval.

“**MMRP**” is an acronym for the Mitigation Monitoring and Reporting Program that the Port Commission adopted by Resolution No. [add specifics].

“**Option**” means development rights granted to Developer for Option Parcels under the DDA.

“**Option Parcel**” means a Development Parcel for which Developer has an Option under DDA art. 7 (Parcel Conveyances), which Developer will exercise through a Vertical Developer Affiliate.

“**Other Acquiring Agency**” means an Acquiring Agency other than the Port.

“**Other City Agencies**” means a City Agency other than the Port.

“**Other City Costs**” means the actual and reasonable costs incurred by any Other City Agency in performing its obligations under this ICA, as determined on a time and materials basis, including any defense costs as set forth in Section [4] of the Developer's Consent attached to this ICA, but excluding work and fees covered by Administrative Fees.

“**Other Regulator**” means a federal, state, or regional body, administrative agency, commission, court, or other governmental or quasi-governmental organization with regulatory authority over Port land, including any Environmental Regulatory Agency.

“**Parties**” or “**Party**” means Developer and City, and their respective successors under this ICA.

“**Permit Set**” is defined in Section 4.4(c)(ii).

“**Permitting Agency**” means the City Agency, typically the Port for all Public Spaces and the Department of Public Works with respect to the work in the Public ROW and for other facilities, responsible for issuing permits for construction and installation of Horizontal Improvements, and for all actions to be taken thereunder, including coordination of plan reviews, approvals, construction inspections, and for determining whether improvements are complete all in accordance with this ICA.

“**person**” means any individual, corporation (including any business trust), limited liability entity, partnership, trust, joint venture, or any other entity or association, or governmental or other political subdivision or agency.

“**Phase**” means one of the integrated stages of horizontal and vertical development of the 28-Acre Site as shown in the Phasing Plan, subject to revision under **DDA art 3** (Phase Submittal Approval).

“**Phase Area**” means the Development Parcels and other land at the 28 Acre Site that are to be developed in a Phase.

“**Phase Improvements**” means Horizontal Improvements that are to be constructed in a Phase.

“Phase Improvements” excludes any Deferred Infrastructure that Vertical Developers will build.

“**Phasing Plan**” means **DDA Exh A4**, which shows the order of development of the Phases and the Development Parcels in each Phase Area, subject to revision under **DDA art. 3** (Phase Submittal Approval).

“**Planning**” means the San Francisco Planning Commission, acting by motion or resolution or by delegation of its authority to the Planning Department and the Planning Director.

“**Planning Commission**” means the San Francisco Planning Commission.

“**Planning Department**” means staff of the City’s Planning Department.

“**Planning Director**” means the City’s Director of Planning.

“**Planning Code**” means the Planning Code of the City and County of San Francisco, California.

“**Port Commission**” or “**Port**” means the San Francisco Port Commission.

“**Port Costs**” means costs that the Port incurs to perform its obligations to Developer and otherwise implement the DDA, including staff costs on a time and materials basis, third-party costs, and costs to administer the CFDs, Sub-Project Area G-2, and the IRFD to the extent not paid by Public Financing Sources.

“Port Costs” excludes Other City Costs, Advances of Land Proceeds, and Port Capital Advances.

“**Port Director**” means the Executive Director of the Port.

“**portwide**” means any matter relating to all real property under the jurisdiction of the Port Commission.

“**Project**” is more particularly described in Planning Commission Motion No. XXXXXX, Attachment A, Section I, adopted on August 24, 2017, but in general, depending on the uses proposed, will include the development of the 28-Acre Site with between 1,645 to 3,025 residential units, a maximum of 1,102,250 to 2,262,350 gross square feet ((gsf) of commercial-office use and a maximum of 494,100 to 518,700 gsf of retail-light industrial-arts use, construction of transportation and circulation improvements, new and upgraded utilities and infrastructure, geotechnical and shoreline improvements, between 2,495 and 2,550 off-street parking spaces, and nine acres of publicly-owned open space.

“**Project Approval(s)**” means the Regulatory Approvals shown on **DA Exh B** and all Future Approvals.

“**Project Coordinator**” is defined in **Section 6.2**.

“**Project Requirements**” means all of the following:

- (i) the Project Approvals,
- (ii) the Transaction Documents,
- (iii) all applicable Existing City Laws, and
- (iv) Future changes to City laws to the extent permitted under the Development Agreement.

“**Public Improvement Agreement**” means an agreement entered into between the City and the Developer for the completion of required Horizontal Improvements if not completed at the time of Final Map approval in accordance with applicable procedures of the Map Act, Subdivision Code and Subdivision Regulations (subject to such exceptions or revisions as

may be approved by the Director of Public Works under the San Francisco Subdivision Code), or such other agreement entered into between City and Developer at any time for the completion of Developer's Horizontal Improvement obligations under the DDA (such as a Street Excavation Improvement Agreement or other Port-issued construction agreement for Public Space Parcels).

“Public ROWs” means Horizontal Improvements consisting of public streets, sidewalks, shared public ways, bicycle lanes, and other paths of travel, associated landscaping and furnishings, and related amenities.

“Public Space” means Horizontal Improvements for public enjoyment, such as public parks, public recreational facilities, public access, open space, and other public amenities, some of which may be rooftop facilities.

“Public Space Parcels” means those parcels designated in the Land Use Plan for Public Space and shown as such in the Infrastructure Plan, as amended from time to time.

“Public Space Improvement Plans” means a Permit Set for Public Space Parcels approved by the Port in accordance with Section 4.4(c)(iv) hereof.

“Public Works” means the San Francisco Public Works department.

“Reference Date” is defined in the Preamble to this ICA.

“Regulatory Agency” means a City Agency or any Other Regulator.

“Regulatory Approval” means any motion, resolution, ordinance, permit, approval, license, registration, permit, utility services agreement, Final Map, or other action, agreement, or entitlement required or issued by any Regulatory Agency with jurisdiction over any portion of the 28-Acre Site, as finally approved.

“Regulatory Requirements” means an obligation imposed by law or policy on development, occupancy, and use of the 28-Acre Site, subject to the Port's authority as trustee under the Burton Act as amended by AB 418, including:

- (i) the conditions of Project Approvals and other Regulatory Approvals;
- (ii) Existing City Laws;
- (iii) Changes to Existing City Laws to the extent permitted under the DA;
- (iv) Impact Fees and Exactions applicable to the Project under the DA; and
- (v) Environmental Laws, the SUD, the Design for Development, the Waterfront Plan, and the Other City Requirements.

“Second Submittal” is defined in Section 4.4(c)(ii).

“Secretary's Standards” means the Standards for Rehabilitation of Historic Properties (for historic tax credit projects) and related Guidelines published in the Secretary of the Interior's Standards for the Treatment of Historic Properties.

“SFFD” is an acronym for the San Francisco Fire Department.

“SFMTA” is an acronym for the San Francisco Municipal Transportation Agency.

“SFPUC” is an acronym for the San Francisco Public Utilities Commission.

“SFPUC Utility-Related Infrastructure” means Horizontal Improvements for utilities serving the Project Site that will be under SFPUC jurisdiction when accepted.

“Site Preparation” means physical work to prepare and secure the 28-Acre Site for installation and construction of Horizontal Improvements, such as demolition or relocation of existing structures, excavation and removal of contaminated soils, fill, grading, soil compaction and stabilization, and construction fencing and other security measures and delivery of the Affordable Housing Parcels, as required under the AHP.

“Site Preparation Plans” is defined in Section 4.4(c)(i).

“SOP Compliance Determination” means the Chief Harbor Engineer’s approval of a Developer SOP Compliance Request in accordance with DDA § 15.7 (SOP Compliance).

“State Lands Commission” means the California State Lands Commission.

“Stormwater Master Plan” is defined in Section 4.12(c).

“Street Excavation Improvement Agreement” means an agreement entered into between the applicable Developer and the City including its Port, prior to the recordation of a Final Map, that allows for construction of Infrastructure.

“Street Segments” are as described in the Schedule of Performance attached to the DDA.

“Subdivision Code” means the San Francisco Subdivision Code.

“Subdivision Regulations” means subdivision regulations adopted by Public Works from time to time.

“SUD” is an acronym for the Pier 70 Special Use District created by Planning Code section 249.70 and related zoning maps setting forth zoning and other land use limitations for the 28-Acre Site.

“Tax Allocation MOU” is a term for the Memorandum of Understanding (Assessment, Levy, and Allocation of Taxes).

“Transaction Document(s)” means any of the following, individually or collectively:

- (i) the DDA, including the Financing Plan, the Appendix, and all attached exhibits, schedules, and implementing agreements and plans;
- (ii) each Vertical DDA and document by which the Port conveys a Development Parcel;
- (iii) each Assignment and Assumption Agreement governing a Transferee’s rights and obligations for the Project;
- (iv) the ICA;
- (v) the Development Agreement;
- (vi) the Master Lease; and
- (vii) any other agreement governing the Parties’ respective rights and obligations with respect to the development or operation of any portion of the 28-Acre Site.

“**Transferee**” means any person to which Developer Transfers its rights and corresponding obligations relating to a Phase, Horizontal Improvements, or horizontal development as permitted under **DDA art. 6** (Transfers).

“Transferee” excludes any Vertical Developer, Lender, or successor to either except to the extent of assumed horizontal development rights or obligations (not including Deferred Infrastructure) as permitted under the DDA.

“**Transportation Infrastructure**” means Improvements and technology necessary for transportation and public transit services on or serving the Project Site that will be under SFMTA jurisdiction, including vehicular traffic and transit signaling and signs; parking meters and other parking control devices; bicycle parking facilities; bicycle rental/sharing facilities; protected bikeways; bus boarding islands or bus bulbs; bus shelters; pedestrian traffic controls; overhead traction power cabling and supports, street lighting supports; wayside control and communication systems and devices; electrical substations, junction boxes, underground conduit and duct banks; transit stops; and street and curb striping.

“**Transportation Plan**” means **DDA Exh B5**, which contains strategies that Developer is required to implement to address movement in and around the 28-Acre Site.

“**Transportation-Related Mitigation Measure**” means any Mitigation Measure, including the TDM Plan, that SFMTA is responsible for monitoring or implementing.

“**Utility Infrastructure**” means systems that provide public services including, but not limited to, subsurface systems for power, stormwater, sewer, domestic water, recycled water, auxiliary water supply systems, and above ground public services including streetlight, stormwater controls, and switchgear.

“**VDDA**” or “**Vertical DDA**” means vertical disposition and development agreement, a document between the Port and a Vertical Developer in the form of **DDA Exh D3**.

“**Vertical Developer**” means a person that acquires Parcel K North or a Development Parcel from the Port under a Vertical DDA for the development of Vertical Improvements.

“**Vertical Improvements**” means a new building that is built or a Historic Building that is rehabilitated at the 28-Acre Site.

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DEVELOPER'S CONSENT

1. Consent and Agreement. By signing below, Developer's representative, on behalf of Developer and Developer Parties: (a) consents to the ICA, understanding that the City and the Port have entered into it for the express collective benefit of the City, the Port, Developer and Developer Parties; (b) agrees that the ICA and this Developer Consent will be binding on the Developer Parties and each Transferee and Vertical Developer and further agrees to cause each Transferee and Vertical Developer to accept the ICA and this Developer's Consent as provided in the DDA; and (c) represents that execution of this Consent is authorized and that the person signing this Consent is authorized to sign this consent on behalf of Developer.

2. Acknowledgements. Developer acknowledges the following.

(a) Developer is an intended third-party beneficiary of the ICA.

(b) On recordation, the ICA and this Developer's Consent will apply to, and burden and benefit, the City, the Port, Developer, and each Transferee and Vertical Developer whether or not this ICA or Developer's Consent is specifically referenced in any Assignment Agreement or conveyance agreement.

(c) City and Port will conduct their review in accordance with the ICA and City and Port review will be limited to compliance with the Project Requirements and be in accordance with the DA.

(d) Developer will be solely responsible for compliance with applicable state and federal laws.

(e) The ICA does not eliminate or alter the process or approval requirements under applicable provisions of state or federal law or the regulations of other Regulatory Agencies with respect to any development at the 28-Acre Site.

(f) Developer will bear all costs associated with applying for and obtaining any Regulatory Approval. Developer, at no cost to the City that is not a City Cost or a Port Cost, will be solely responsible for complying with any conditions or restrictions imposed on the construction of Improvements under a Regulatory Approval, except those imposed on construction of Vertical Improvements on the Affordable Housing Parcels. Developer will have the right to appeal or contest any condition imposed under a Regulatory Approval in any manner permitted by law, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee. If Developer can demonstrate to the City's reasonable satisfaction that an appeal would not affect the City's responsibility or liability for any conditions that are or could be the responsibility of any City Agency, the City will not unreasonably withhold or delay its consent. In all other cases, an affected City Agency will have the right to give or withhold its consent in its sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Regulatory Approval.

Developer Consent-1

(g) The Port Director may require Developer to provide the Port Commission, the Planning Commission, the Board of Supervisors, and any other Regulatory Agency with periodic updates on the Project.

(h) Developer acknowledges that for City Agencies to meet the time periods under the ICA, for review of Construction Documents, inspections, for making completion determinations, for acceptance of Horizontal Improvements (and portions or components thereof), for release of security, in accordance with the ICA, Developer will, as described in the ICA, (i) provide advance notices of Improvement Plan submittals (including advance notice of any requests for exceptions or deviations from Subdivision Regulations, Infrastructure Plans or any other Development Requirements) and advance notice of requests for inspections; (ii) provide with each Improvement Plan resubmittal a redline showing portions of the Improvement Plans that have been revised, and a chart identifying each comment, the response to that comment, and where it is shown on the Plans; (iii) ensure that each Improvement Plan Submittal is complete and internally consistent; (iv) provide a complete package of project completion and/or acceptance requirements; and (v) participate in regularly (at least quarterly) status and coordination meetings with the Permitting Agency (and other affected City Agencies, as applicable).

3. No Authority to Bind City. Developer understands that it must not agree to conditions or restrictions to any Regulatory Approval from a Regulatory Agency that could create: (a) any obligations on the part of any City Agency that is required to be a co-applicant or co-permittee, unless the obligation is specifically the City's responsibility under this ICA, the Transaction Documents, or the Regulatory Requirements; or (b) any restrictions on City property, unless in each instance the affected City Agency in its reasonable discretion has previously approved the conditions or restrictions in accordance with this Section.

4. Reimbursement of Other City Costs. In consideration of Developer's benefits under the ICA, Developer agrees to reimburse Other City Costs incurred for each consenting City Agency's performance under the ICA under and subject to *DDA § 19 (Project Administration)*, *DA § 4.4 (Payment of Other City Costs)*, and **ICA Section 3.6 (Cost Recovery)**.

5. Indemnity. Developer acknowledges that Developer has an obligation to indemnify the City, the Port, and Other City Agencies as Indemnified Parties under *DDA art. 9 (28-Acre Site Property Condition and Indemnities)* and the City under *DA § 4.5 (Indemnification of City)*.

6. Limitations on Liability.

(a) **Generally.** Developer, on behalf of itself and the other Developer Parties, understands and agrees that no commissioners, members, officers, agents, or employees of the City, the Port, or any Other City Agency (or any of their successors or assigns) will be personally liable to the other or to any other person, nor will any officers, directors, shareholders, agents, partners, members, or employees of any Developer Party (or of its successors or assigns) be personally liable to the City, the Port, or any Other City Agency, or any other person in the event of any default or breach of the ICA by the City, the Port, or any Other City Agency or of this Developer's Consent or for any amount that may become due or any obligations under the ICA or this Developer's Consent.

(b) No Release of Existing Liability. This provision will not release obligations of a person that is otherwise liable, such as the general partner of a partnership that is liable for the obligation or the guarantor of an obligation.

(c) No Municipal Liability for Damages. Neither the Port nor any Other City Agency will be liable to any Developer Party for damages under the ICA for any reason. Developer covenants not to sue for or claim any damages against any City Agency and expressly waives its right to do so.

DEVELOPER:

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY

By: _____

Kevin Ratner,
Vice President

Date: _____

Addresses for courtesy copies of notices:

FC Pier 70, LLC,
949 Hope Street, Suite 200
Los Angeles, California 90015
Attention: Mr. Kevin Ratner
Facsimile: (213) 488-0039
Email: kevinratner@forestcity.net

With a copy to:

Forest City Enterprises, Inc.
50 Public Square
1360 Terminal Tower
Cleveland, Ohio 44113
Attention: Amanda Seewald, Esq.

And to:

Gibson Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Attn: Neil H. Sekhri, Esq.

Developer Consent-3

Developer Consent-4

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Developer Consent-5

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**CONSENT OF
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

1. Execution. By executing this Consent, the persons named below confirm the following.

(a) The SFMTA Board of Directors consented to the matters listed below after considering at a duly noticed public hearing the Infrastructure Plan and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, for the Project.

(b) SFMTA does not intend to limit, waive, or delegate in any way its exclusive authority under Article VIIIA of the Charter.

2. Matters Covered. SFMTA agrees to the following.

(a) The Project Approvals, including the Infrastructure Plan, the Design for Development, the Transportation Plan and the MMRP will govern matters under SFMTA jurisdiction, including Transportation Infrastructure and Transportation-Related Mitigation Measures. SFMTA staff will:

(i) participate in pre-submittal conferences and meet-and-confer meetings to facilitate the Project;

(ii) review and comment on Improvement Plans relating to matters under its exclusive authority under the Charter and provide comments in accordance with the ICA;

(iii) inspect Transportation Infrastructure within 21 days after receiving a copy of an Inspection Notice from the Director of Public Works and to provide its approval and acceptance or a punch list of items to be corrected within five days after performing its inspection in accordance with the ICA.

(b) SFMTA will review and approve the Transportation-Related Infrastructure described in the Infrastructure Plan (*e.g.*, traffic control devices (primarily signs, traffic signals, striping in the Public ROW), bike racks, transit bulbs and shelters, and meters in City-accepted Public ROWs, subject to Developer satisfying SFMTA requirements and the Transportation-Related Mitigation Measures for safety, design, construction, testing, performance, training, documentation, warranties, and guarantees that are consistent with the applicable Regulatory Requirements.

(c) SFMTA's approvals will be consistent with the DDA, the Infrastructure Plan, the Design for Development, the Master Utilities Plan for streets, the Transportation Plan, Regulatory Requirements, and its prior approvals. SFMTA will not withhold its consent unreasonably to proposed changes for Transportation Infrastructure, including the Infrastructure Plan, the Design for Development, the Master Utilities Plan for streets or the Transportation Plan if the changes meet the requirements of this Consent.

(d) SFMTA will procure, accept, operate, and maintain transit systems described in the Infrastructure Plan and the Transportation-Related Mitigation Measures subject to identification of resources, appropriation of funds, and other fiscal and

operational considerations, including the level of Municipal Railway service provided citywide.

(e) SFMTA will satisfy the construction requirements that are assigned to SFMTA in the Infrastructure Plan and Transportation-Related Mitigation Measures, as applicable, subject to identification of resources, appropriation of funds, and other fiscal and operational considerations, including the level of MUNI service provided citywide.

(f) SFMTA will cooperate with Developer in phasing any required SFMTA construction to the extent practicable given fiscal and operational considerations.

(g) SFMTA will license temporarily any property under its jurisdiction to Developer on commercially reasonable terms, including indemnification and security provisions in keeping with the City's standards. Developer access will be deemed necessary if it authorizes Developer to investigate adjacent environmental conditions, undertake environmental response programs, undertake Mitigation Measures, construct Horizontal Improvements upon, or otherwise use the property to implement Regulatory Requirements.

3. Cost Recovery. SFMTA acknowledges that Developer has agreed to reimburse Other City Costs, including SFMTA's costs, to implement the matters described above, including reimbursement for review of Improvement Plans, on the following conditions.

(a) SFMTA must deliver to the Port a quarterly statement of SFMTA costs in time to allow the Port to prepare a combined quarterly statement of Other City Costs within six months after the date the costs are incurred.

(b) SFMTA will have no right to recover any SFMTA cost that is not included in a quarterly statement within 12 months after it was incurred.

(c) Developer will make aggregate reimbursement payments directly to the Port, which will be responsible for disbursing the funds to SFMTA without incurring liability for paying SFMTA amounts owing that Developer withholds.

4. Notice Address. SFMTA's address for notices given under the ICA is:

San Francisco Municipal Transportation Agency
One South Van Ness Avenue
7th Floor
San Francisco, California 94103

Attn: Director

Telephone No.:
Facsimile No.:
Email:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Municipal Transportation Agency

SFMTA Consent-2

By: _____

Ed Reiskin
Executive Director

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: _____

Susan Cleveland-Knowles
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors Resolution No. **XXXX**

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

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**CONSENT OF
SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

1. Execution. By executing this Consent, the person named below confirms that SFPUC has reviewed the ICA, and after considering the Infrastructure Plan, Development Agreement and Utility-Related Mitigation Measures at a duly noticed public hearing, took the following actions.

(a) SFPUC authorized its General Manager to enter into the ICA and consent to the ICA and Infrastructure Plan as they relate to matters under SFPUC jurisdiction, for SFPUC Utility Infrastructure and Utility-Related Mitigation Measures.

(b) In accordance with Chapter 99 of the San Francisco Administrative Code, the SFPUC has performed a feasibility study and has determined that it will provide electric power to the project. The SFPUC agrees that electrical service will be reasonably available for the Project's needs and that the projected price for electrical service is comparable to rates in San Francisco for comparable service. The SFPUC agrees to work with the Developer to provide temporary construction and permanent electric services pursuant to its Rules and Regulations for Electric Service.

(c) SFPUC agreed to accept, operate, and maintain SFPUC Utility Infrastructure, subject to appropriation and to Developer satisfying SFPUC requirements for construction, warranties and guarantees, operations and maintenance manuals, testing, and training, consistent with approved improvement plans. The SFPUC's responsibilities for the permitting, acceptance, operations and maintenance of utility related components constructed pursuant to this agreement are contingent on execution of a memorandum of understanding between the Port, SFPUC and other relevant City agencies regarding the implementation of such responsibilities.

(d) SFPUC delegated to the SFPUC General Manager or his designee any future SFPUC approvals under the ICA, subject to applicable Regulatory Requirements including the Charter.

2. No Waiver. By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit SFPUC's exclusive authority under Article VIII B of the Charter.

3. Cost Recovery. The SFPUC acknowledges that Developer has agreed to reimburse Other City Costs, including the SFPUC's costs, to implement the matters described above, on the following conditions.

(a) The SFPUC shall provide the Director of Public Works with a quarterly statement of the SFPUC's costs in time to allow Public Works to provide Developer with a combined quarterly statement of Other City Costs within six (6) months after the date the costs are incurred.

(b) The SFPUC will have no right to recover any SFPUC cost that is not included in a quarterly statement within twelve 12 months after it was incurred.

(c) Developer will make aggregate reimbursement payments directly to the Port, which will be responsible for disbursing the funds to the SFPUC without incurring liability for paying SFPUC amounts owing that Developer withholds.

4. Notice Address. SFPUC's address for notices given under the ICA is: [insert address].

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Public Utility Commission

By: _____
Harlan Kelly
General Manager

Date: _____

Authorized by SFPUC Resolution No. **XXXX**

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Francesca Gessner
SFPUC General Counsel

**CONSENT OF
SAN FRANCISCO FIRE DEPARTMENT**

1. Matters Covered. By executing this Consent, the persons named below confirm that, after considering the Infrastructure Plan, they have consented on behalf of SFFD to the following.

(a) The ICA will govern procedures relating to matters under SFFD jurisdiction, including the Fire Safety Infrastructure.

(b) SFFD agrees that its approvals for the Project will be consistent with the Development Requirements, including the Infrastructure Plan and Subdivision Regulations, and its prior approvals. SFFD agrees not to withhold its consent unreasonably to proposed changes to the ICA, or the Infrastructure Plan in relation to Fire Safety Infrastructure if the changes meet the requirements of this Consent.

(c) SFFD staff will be responsible for any future SFFD approvals under this ICA, subject to applicable law including the City Charter. SFFD staff will review and comment on Improvement Plans relating to matters under its exclusive authority under the Charter and participate in pre-filing conferences, pre-Submittal conference, and meet-and-confer meetings to facilitate the Project in accordance with the time-frames and procedures in this ICA.

(d) SFFD agrees to inspect Fire Safety Infrastructure within 21 days after receiving a copy of an Inspection Notice from the Director of Public Works and to notify the Director of Public Works in writing (which may be by email or interdepartmental mail) of SFFD's approval or provide a punch list of items to be corrected within five days after performing the inspection.

2. No Limitation. By authorizing this SFFD Consent, the SFFD Fire Chief and Fire Marshal do not intend to limit in any way SFFD's authority under Sections 4.108 and 4.128 of the City Charter.

3. Cost Recovery. SFFD acknowledges that Developer has agreed to reimburse Other City Costs, including the SFFD's costs, to implement the matters described above, on the following conditions.

(a) SFFD must provide the Port with a quarterly statement of SFFD's costs at the Port's address for Notices set forth in Section in time to allow with the Port to prepare a combined quarterly statement of Other City Costs within six months after the date the costs are incurred.

(b) SFFD will have no right to recover any SFFD cost that is not included in a quarterly statement within 12 months after it was incurred.

(c) Developer will make aggregate reimbursement payments directly to the Port, which will be responsible for disbursing the funds to SFFD without incurring liability for paying SFFD amounts owing that Developer withholds.

4. Notice Address. SFFD's address for notices given under the ICA is: [insert address].

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
San Francisco Fire Chief and Fire Marshal

By: _____

Joanne Hayes-White
Fire Chief

Date: _____

By: _____

Fire Marshal

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____

Deputy City Attorney