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**MEMORANDUM OF UNDERSTANDING
REGARDING INTERAGENCY COOPERATION**

BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE
MAYOR, THE BOARD OF SUPERVISORS AND CERTAIN OTHER OFFICERS AND
AGENCIES OF THE CITY AND COUNTY**

AND

**THE CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

For Development of the Mission Rock Project at Seawall Lot 337 and Pier 48

[Reference Date]

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APPENDIX OF DEFINITIONS:

CONSENTS:

Consent of Developer Seawall Lot 337 Associates, LLC
Consent of San Francisco Municipal Transportation Agency

Consent of San Francisco Public Utilities Commission
Consent of San Francisco Fire Department

EXHIBITS:

ICA Exhibit A:	Infrastructure Plan
ICA Exhibit B:	Intentionally Omitted
ICA Exhibit C:	Proposal for Non-Standard Infrastructure (For Discussion Purposes Only)
ICA Exhibit D:	Proposal for Deferred Infrastructure (For Discussion Purposes Only)
ICA Exhibit E:	Basis of Design Report

**MEMORANDUM OF UNDERSTANDING
REGARDING INTERAGENCY COOPERATION**
(Mission Rock Project at Seawall Lot 337 and Pier 48)

This **MEMORANDUM OF UNDERSTANDING REGARDING INTERAGENCY COOPERATION** (Seawall Lot 337 and Pier 48), referred to in the Transaction Documents as the Interagency Cooperation Agreement (“**ICA**”) and dated for reference purposes only 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 Controller, the City Administrator, the Director of Public Works, the San Francisco Municipal Transportation Agency, the San Francisco Fire Department and the San Francisco Public Utilities Commission (the “**Other City Parties**”), and the City, acting by and through the **SAN FRANCISCO PORT COMMISSION** (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 (“**DDA**”) between the Port and Seawall Lot 337 Associates, LLC (“**Developer**”), relating to the development of the Project on the Project Site. The Project Site is Port property generally known as Mission Rock, and located at Seawall Lot 337, Pier 48, and adjacent streets and open space areas.

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

RECITALS

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

1. Subdivision of the Project Site;
2. Construction of Horizontal Improvements for the Project, as described in the Infrastructure Plan (**ICA Exhibit 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. Developer will have the flexibility to determine the number and size of Phases to respond to market conditions within the framework, and subject to the requirements, described in the DDA and Development Agreement.

C. Planning Code section 279.80 established the Mission Rock Special Use District (“**SUD**”) and, together with the Design Controls included in Section 279.80, specifies permitted land uses and other land use restrictions applicable to the Project Site. The Design Controls and the Infrastructure Plan incorporated into the DDA and the Development Agreement (and also

attached hereto as **ICA Exhibit A**), as each may be amended from time to time, provide additional standards and guidelines for vertical development and horizontal development. The procedures for design review and approval for Vertical Improvements and vertical development within the Project Site, including Pier 48, are described in Section 279.80.

D. This ICA establishes 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 Development Agreement, 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 as described in this ICA.

1.3. 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 express benefit of and enforceable by Developer and Developer Parties, Transferees and Vertical Developers, as the third party beneficiaries to the extent of their rights and obligations hereunder, 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.

1.4. 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 for the Project, including Subdivision Maps, Improvement Plans and associated design criteria and requirements, the issuance of applicable permits, approvals, agreements and entitlements at each applicable stage of design and permitting, and the inspection, review, approval and acceptance of Horizontal Improvements at each applicable stage of construction. Accordingly, the Port and

Other City Agencies agree to proceed expeditiously and to 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 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 **Section 3.6(f)** (Distribution of Reimbursements) will continue until the Board of Supervisors 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 DDA and Development Agreement, Project Approvals and the Project Requirements, and undertake and complete all actions or proceedings reasonably necessary or appropriate to implement the Project. Except as otherwise provided in the Transaction Documents, Regulatory Approvals and Regulatory Requirements, 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 under the jurisdiction of the City Administrator, and each City Agency that consents to this ICA, will comply with this ICA, and will be entitled to reimbursement of costs under the DDA and **Section 3.6** (Cost Recovery).

(b) Specific Agencies. The following City Agencies have, as of the Reference Date, signed this ICA, 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; (vi) the San Francisco Fire Department; (vii) the Planning Commission (through the Development Agreement); and (viii) the 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 Other 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 Other City Agencies will cooperate with the Port, with each other and with reasonable requests by Developer to obtain Regulatory Approvals from any Regulatory Agency other than a City Agency that are 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 Horizontal Improvements, then when the City (including the Port) accepts any Horizontal Improvements 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, including those listed below.

(a) Phase Review. Preliminary (or Pre-Phase Application) phase reviews and Phase Submittal reviews and Phase Approvals in accordance with the DDA.

(b) Design Review. Schematic design review of Horizontal Improvements for Public Space and Public ROWs and schematic design of Vertical Improvements, as described in the SUD.

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

(d) Public Spaces and Public ROWs. Instituting and completing actions or proceedings for opening, closing, vacating, widening, or changing the grades of Public ROWs or Public Spaces and for other necessary modifications of Public ROWs (including streets, street layouts and other public rights of way) or Public Spaces in the Project Site, including any requirement to issue permits to abandon, remove, and relocate public utilities (as allowed under a City franchise and, when applicable, City utilities) within Public ROWs or Public Spaces as necessary to carry out the Project in accordance the Project Requirements and this ICA, except where City lacks such authority or required property rights.

(e) 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.

(f) Acceptance. Coordinating inspections and reviews and expeditiously taking timely actions to make construction completeness determinations or to notify Developer of deficiencies, to release security and, where applicable, seek Port Commission or Board of Supervisors approval to accept Horizontal Improvements from Developer in accordance with the DDA, this ICA, the Subdivision Code and Subdivision Regulations, subject to any exceptions that may be authorized by the Public Works Director under the Subdivision Code. Without limiting the foregoing, the Port and Other City Parties acknowledge that the Infrastructure Plan sets forth standards for certain street segments and other Horizontal Improvements that will require Developer to request exceptions under the Subdivision Code and the Subdivision Regulations and that the City retains discretion to grant such exceptions. As of the Reference Date, the Director of Public Works has not authorized any such exceptions.

(g) 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 or other community benefits. The City will allocate any state and federal assistance that the City receives for the Project to the Port for use in accordance with the DDA, subject to a Board of Supervisors resolution to accept and expend such funds.

(h) Environmental Review. Complying with and implementing Mitigation Measures, including without limitation, Transportation 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.

(i) Affordable Housing. Using its good faith efforts to assist Vertical Developers of mixed-income residential development with funding applications.

(j) Historic Tax Credits. Using its good faith efforts to assist Developer Parties in pursuing Historic Tax Credits and other incentives available to encourage the rehabilitation of Pier 48 in accordance with the Secretary's Standards.

(k) Transportation Infrastructure. Evaluating Transportation Infrastructure.

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 Other City Costs and Port for Port Costs incurred to comply with this ICA as and to the extent provided in the Financing Plan § 9.2 (Port Accounting and Budget), DA § 4.3 (Payment of Planning Costs), and this Section. With respect to reimbursement of Port Costs and Other City Costs as described in this Section, the Financing Plan will control over any conflict with the Development Agreement and this ICA, and this ICA will control over any conflict with the Development Agreement regarding reimbursements 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 Reference Date: (i) costs of a Project Coordinator if contracted for by an Other City Agency; (ii) costs of Other City Agencies that sign this ICA or an attached Consent; (iii) costs of additional Other City Agencies that later submit Consents that Developer countersigned; and (iv) costs of any third party engineers retained pursuant to section 4.3. Developer will have no other obligation to reimburse costs incurred by any Other City Agency unless specifically provided for in another Transaction Document or required as part of an Administrative Fee.

(c) Annual Port Budget. Under Financing Plan § 9.2 (Port Accounting and Budget), the Port will collaborate with Developer annually to prepare an Annual Port Budget that includes estimates of Port Costs and Other City Costs. One purpose of preparing the Annual Port Budget is to confirm the Port's and Developer's expectations that Project Payment Sources

expected to be available will be sufficient to reimburse Developer's Horizontal Development Costs, Port Costs, and Other City Costs. Each Other City Agency will cooperate with the Port in its preparation of its Annual Port Budget for the Project.

(d) Compiled Other City Costs Statements. 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 to Developer a single combined Port Quarterly Report that shows the amount of Other City Costs and Port Costs billed by each City Agency. Each Other City Agency agrees to make reasonably diligent efforts to include all Other City Costs incurred within the prior quarter in each quarterly statement.

(e) Port Quarterly Reports.

(i) Under Financing Plan § 9.2 (Port Accounting and Budget), the Port will deliver Port Quarterly Reports of Other City Costs and Port Costs to Developer within 90 days after the end of each calendar quarter. Other City Agencies agree to make reasonably diligent efforts to include all of their Project-related costs incurred. The Port will compile, but report separately, each Other City Agency's Other City Costs in each Port Quarterly Report. The Port and Developer will be entitled to assume, without any duty of inquiry, that each Other City Agency's statement of Other City Costs is complete and complies with this Section.

(ii) If an Other City Agency fails to submit or to include any of its Project related costs incurred in an Other City Agency quarterly statement provided to the Port, the Other City Agency will have a limited grace period, which it may exercise once within any 12-month period, to have the omitted Other City Cost added to a Port Quarterly Report.

(iii) 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 six (6) months otherwise.

(f) Distribution of Reimbursements.

(i) Developer will reimburse Other City Costs and Port Costs by payments to the Port in accordance with Financing Plan § 9.2(e) (Reimbursement). 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(e)** (Port Quarterly Reports) above.

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 Development Agreement.

4. REVIEW PROCEDURES FOR 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 Later Approvals, including all permits, approvals, agreements, plans, and other actions that are necessary to implement the

Project, including without limitation, all Phase Submittals, schematic design reviews, Tentative Maps, phased Final Maps, (including Final Maps), Improvement Plan Submittals, construction documents, construction permits, construction inspections, and finally complete determinations, releases of security, acceptances and acquisition of Horizontal Improvements.

4.2. Intentionally Omitted.

4.3. Project Street Designs.

(a) Development of Design Criteria.

(i) Prior to the Reference Date:

(A) The Port, in consultation with Other City Agencies, will have retained a qualified independent third party engineer(s) to assist in reviewing Developer's submissions related to the proposed Structured Street Superstructure, and associated Structured Street Drainage, Flexible Utility Connections and Flexible Street Improvements, each as defined in ICA Exhibit C and collectively referred to as the "Structured Street System", as more specifically described in the Infrastructure Plan;

(B) Developer will have provided to Port, the Port's independent third party engineer(s), and Other City Agencies, Developer's existing preliminary geotechnical, structural and civil engineer data and information, and any other directions, assumptions, and design approach used to form the basis for the Structured Street System, as described in the Infrastructure Plan; and

(C) Developer, Port, the Port's independent third party engineer(s) and Other City Agencies will have met to review such data and information.

(ii) Developer, in coordination and consultation with the Port, the Port's independent third party engineer(s), and Other City Agencies, will develop and establish design criteria for the Structured Street System or any alternative proposal (the "Project Street Design Criteria"), and they will endeavor, working together with consistent due diligence, to complete the Project Street Design Criteria within 90 days of the Reference Date, subject to such reasonable adjustments as may under the circumstances be necessary. The Project Street Design Criteria will establish the foundation for Developer to prepare the Basis of Design and Improvement Plan Submittals.

(b) Basis of Design. Because of the unique nature of the geologic conditions at the project site, Port (and Other City Agencies) will establish a plan for periodic check-ins, consultation and coordination with Developer, in connection with Developer's preparation of the Basis of Design. Developer, the Port and Other City Agencies currently anticipate that the Basis of Design will reflect approximately 50% level of Improvement Plan development. As provided in Section 4.6(b)(iv) below, the Basis of Design will include a description of proposed requests for exceptions or design modifications under the Subdivision Code or Subdivision Regulations. It is currently anticipated that the Basis of Design would be prepared and submitted within 180 days from completion of the Project Street Design Criteria. Developer and City may, as necessary or appropriate agree to modify the Basis of Design submittals as described in **Exhibit E.**

(c) Independent Third Party Engineer. Nothing herein limits the discretion or authority of the Port, and Other City Agencies to retain or utilize a qualified independent third

party engineer, or other qualified consultants, to provide engineering assessments or peer review of any plans.

4.4. Phase Submittal Review.

(a) Phase Submittals. Phase Submittals and the Phase Approval Process are described in Section 3 of the DDA. They are intended to provide a comprehensive review of the proposed Horizontal Development and Vertical Development for the applicable phase, estimated Horizontal Improvements costs, and identification of Project Payment Sources. Each Phase Submittal will include sufficient information, as described in DDA Section 3.2 (Phase Submittal), to determine that the Phase Submittal is consistent with the applicable provisions of the Transaction Documents.

(b) Acquiring Agencies' Review.

(i) The Port will advise applicable Acquiring Agencies of an application for a Phase Approval and provide a copy of Developer's Phase Submittal to afford such Other City Agencies an opportunity to consult with and to provide comments to Port.

(ii) All such applicable Other City Agencies will provide the Port Director with their comments on the Phase Submittal as soon as reasonably possible but no later than twenty-one (21) days after the Port makes its completeness determination, and ten (10) days after Developer submits any amended Phase Submittal. Each Acquiring Agency will include therein any initial comments or concerns regarding the costs to operate and maintain (where applicable) Phase Improvements that it will acquire and/or maintain under the Acquisition Agreement, provided, however, that nothing herein and no such comments will require Developer to construct or provide Phase Improvements except as provided in the Infrastructure Plan, Design Controls or other Regulatory Approval.

(c) Port Consent. The Port's granting of a Phase Approval will be evidence of Port's approval, as property owner, to the processing of a Subdivision Map and all other Regulatory Approvals based thereon or consistent therewith.

4.5. Improvement Plans for Horizontal Improvements-Generally.

(a) Coordination of Plan Reviews. Consistent with Port Commission approval of Schematic Design Applications for Public Spaces (as described in DDA § 12.5 (Schematic Design Review of Public Spaces)), the Port and the City will allocate responsibility for subsequent review of final construction documents for Horizontal Improvements for consistency with the Project Requirements and other Regulatory Requirements and Regulatory Approvals, provided that:

(i) For Public Spaces, Port will be the Permitting Agency and will coordinate reviews by any Other City Agency, as applicable, and approval of Improvement Plans for Horizontal Improvements in Public Spaces;

(ii) For the proposed Structured Street Superstructure or alternative proposal, Port, in consultation with the City Engineer, will be the Permitting Agency and will coordinate reviews by any Other City Agency, as applicable;

(iii) For Public ROWs (excluding the proposed Structured Street Superstructure or alternative proposal), Public Works will be the Permitting Agency and the Port will assist the Permitting Agency with coordinating reviews by Other City Agencies for all other Horizontal Improvements (including review and approval of Master Utility Plans); and

(iv) Improvement Plans for Horizontal Improvements generally will 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.

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

(a) Consistency with Project Approvals. The Project Approvals include an Infrastructure Plan attached hereto as **Exhibit A** that has been reviewed and conditionally approved by Public Works, SFPUC, SFFD, Port, and SFMTA, subject to any modifications following the independent third-party review pursuant to **Section 4.3** (Project Street Designs). The SFPUC will review and approve final Master Utilities Plans prior to approval of the Improvement Plans. Accordingly, the applicable Permitting Agency will issue Construction Permits for the applicable Horizontal Improvements if the Permitting Agency and reviewing Other City Agencies find that the Improvement Plans are consistent with the Project Requirements and other applicable Regulatory Requirements and Regulatory Approvals, 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 Public Works Director under the Subdivision Code.

(b) Design Standards, Exceptions and Design Modifications.

(i) Developer has proposed in the Infrastructure Plan certain non-standard Horizontal Improvements including the Structured Street Superstructure, interfaces with existing perimeter streets, shared public ways, and the use of high-density polyethylene pipe ("**HDPE**") throughout the Project Site (collectively, "**Non-Standard Infrastructure**") that would require exceptions and design modifications from the standards set forth under the Subdivision Regulations. A description of the Developer's proposal for principal components of Non-Standard Infrastructure, as described in the Infrastructure Plan, is attached as **ICA Exhibit C** for discussion purposes only.

(ii) Within 120 days following Developer's Submittal of a Basis of Design Report, Public Works, SFMTA, SFPUC and the Port will in good faith attempt to agree on a conceptual framework for the Infrastructure Acceptance and Maintenance MOA, as described below. Within 120 days following the Developer's submittal of a First Submittal, Public Works, SFMTA, SFPUC and the Port will negotiate in good faith to reach agreement on a memorandum of agreement ("**Infrastructure Acceptance & Maintenance MOA**") relating to Developer's proposal for both City-standard and Non-Standard Infrastructure, such as but not limited to the proposed Structured Street System, as referenced in the Infrastructure Plan as it may be modified pursuant to this ICA. The Infrastructure Acceptance & Maintenance MOA will identify the applicable Acquiring Agencies, the entities responsible for maintenance and liability, the maintenance funding sources, the anticipated exceptions and design modifications to the Subdivision Code or Subdivision Regulations known to Developer upon submittal of the Basis of Design, and any special inspection and training procedures required by the City. The City and the Port retain full discretion to negotiate the terms of the Infrastructure Acceptance & Maintenance MOA and to approve, conditionally approve, or reject Developer's proposal for Non-Standard Infrastructure pursuant to the applicable Municipal Code at the time of Developer's proposal. The Parties agree the Infrastructure Acceptance & Maintenance MOA may be finally executed by the Directors of the applicable City Agencies, unless otherwise required by the City Charter or other City law. The following principles will guide the development of the Infrastructure Acceptance & Maintenance MOA:

A. The acceptance procedures will provide for diligent and expeditious processing of acceptance requests.

B. Permitting Agencies will introduce complete acceptance packages to the Board of Supervisors with a goal of final approval within 6 months after the date of the Developer's submission of a complete request.

C. City or Port acceptance of Horizontal Improvements, as applicable, will include the 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 standard terms of an encroachment permit (which may include Developer maintenance obligations), as provided in the Project Requirements, and except as may be otherwise provided in the Infrastructure, Acceptance and Maintenance MOA.

D. The Port and Other 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 MOA or amendments to the Acceptance and Maintenance MOA as described below.

E. The Infrastructure, Acceptance and Maintenance MOA shall provide for provision of additional Project design development information, as necessary to address matters covered under the Infrastructure, Acceptance and Maintenance MOA, including procedures for amendment of the Infrastructure, Acceptance and Maintenance MOA as necessary to address exceptions or design modifications to the Subdivision Code or Subdivision Regulations relating to Improvement Plans for subsequent Phases.

(iii) 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 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 regarding such requests.

(iv) Developer will identify in its Basis of Design Report (or subsequently in an Improvement Plan Submittal if the need for an exception not previously requested arises during the review of Improvement Plan Submittals or in response to City Agency comments) the type, geographic location, and rationale for all exceptions that it intends to request. Developer will provide Public Works and the Port the names of persons in all affected City Agencies that Developer has asked to consider any such requests for exceptions. Within 90 days from the submittal of the Basis of Design Report or Improvement Plan Submittal, as applicable, 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 Report; and (v) exceptions that the Director is unlikely to recommend for approval. The City may request additional information as it reasonably

determines is necessary to make these determinations. The additional information may extend the time required to provide the written responses on the exceptions.

(v) **Public Works** (and the Port, if required), in consultation with applicable Other City Agencies, may approve minor deviations in a particular design from the standards in the Infrastructure Plan, and Subdivision Regulations, in accordance with **Section 9.2(e)** (Minor Deviations).

(c) **Deferred Infrastructure.** Developer has proposed to submit applications for Horizontal Improvements that will include requests for Deferred Infrastructure. Developer's current concept for Deferred Infrastructure is described in **Exhibit D** attached for discussion purposes only. Certain aspects of the proposed Deferred Infrastructure concept in **Exhibit D** would require an amendment to the current Subdivision Code and Subdivision Regulations or an exception granted by the Public Works Director under Subdivision Code Section 1312. It is also contemplated that the Board of Supervisors and the Public Works Director may consider amending the Subdivision Code and the Subdivision Regulations in a manner that would address requests for Deferred Infrastructure described in Exhibit D. The Port and Other City Parties will work in good faith to explore the proposed approach to Deferred Infrastructure subject to the understanding that nothing in this ICA obligates an Acquiring Agency to accept Deferred Infrastructure.

(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. Each Improvement Plan Submittal shall be reviewed and approved by all applicable City Agencies and the Permitting Agency. Issuance of a Construction Permit will be in accordance with this Article. 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, and Ground Improvement 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 will be submitted as follows:

A. Basis of Design Report, including, as applicable the documents and information described in **ICA Exhibit E**; and

B. Horizontal Improvement Plan Submittals consisting of a: 1) First Submittal; 2) Second Submittal; and 3) Permit Set, which will comprise the final Improvement Plans to be attached to the Public Improvement Agreement. Each Improvement Plan Submittal will incorporate any agreed upon comments and revisions required by the reviewing City Agencies. Each Improvement Plan Submittal may also incorporate Demolition, Utility Relocation, and Mass Grading Plans as appropriate.

(iii) **Public Space Plans** will be submitted as a single permit application for each park or may be combined with other Public Space areas, as appropriate (the "**Public Space Plans**"). Procedures for Port Commission prior review and approval of Schematic Design Applications for Public Spaces is provided in Section 12.5 (Schematic Design Review of Public Spaces) of the DDA.

(e) Pre-Submittal Conference for Basis of Design Report and Improvement Plans. 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, Port and Developer may hold a pre-submittal conference for each subsequent 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. The Permitting Agency will require Developer to provide the Port and any Other City Agencies choosing to participate with copies of materials to be discussed at any pre-submittal conference. At the pre-submittal conference, Developer shall provide a schedule of anticipated milestones and activities, including: (i) subdivision map processing, (ii) infrastructure engineering and permitting, (iii) construction, and (iv) acceptance. Developer shall regularly (at least quarterly) update this schedule.

(f) Submittal of Improvement Plans for City Review. Prior to submittal of 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 in the form of AA Exh B (Preliminary Acquisition Prices) or Acquisition Price Updates under AA § 1.3 (Acquisition Prices), 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, other Regulatory Requirements, Regulatory Approvals and Improvement Plans previously approved. Each Other City Agency will provide comments to the Permitting Agency within thirty (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. If the Permitting Agency and an Other City Agency (or the Port if it is not the Permitting Agency) disagree on their comments, then they shall work to resolve any differences in accordance with **Section 4.6(i)** (Consultation). 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 thirty (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 4.6(i)** (Consultation) delays the Permitting Agency's delivery of comments beyond the thirty (30) day review period, then Developer may invoke Administrative Delay under the DDA as described in **Section 4.6(p)** (Excusable Delay).

(i) 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 Report and the First Submittal, and (ii) within 21 days for any other Improvement Plan Submittal.

(j) Proposed Revisions.

(i) 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 Report 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, 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.

(ii) Prior to each other subsequent re submittal Developer will provide at least fourteen (14) days advance notice of the resubmittal date. Each resubmitted Improvement Plan Submittal will identify design revisions by clouding the changes and annotating the clouded areas with a plan revisions delta indicative of the sequential re submittal number 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 identifying clouds and table, then the reviewing City Agencies will have forty-five (45) days to review the applicable Improvement Plan Submittal or resubmittal.

(k) Approval 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 as described above within thirty (30) days after the later of the applicable Improvement Plan Submittal or submittal of revisions thereto in accordance with **Section 4.6(j)** (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 and acknowledging that time periods for review and approvals hereunder may be shorter than those provided under the Permit Streamlining Act. Notwithstanding the reference to the time periods described in the Permit Streamlining Act, under no circumstances will any Improvement Plan Submittals be deemed approved.

(l) Resubmittal Upon Disapproval. If the Permitting Agency disapproves a Permit Set or any other Improvement Plan Submittals, 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 Report) until the Permitting Agency approves the amended Improvement Plan Submittal.

(m) 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 on the basis of any element that conforms to and is consistent and in compliance with the Project Requirements (including the Infrastructure Plan and Master Utilities Plans), other Regulatory Approvals or Regulatory Requirements, and the Permitting

Agency's or City Agency's prior approvals, or impose new conditions that conflict with the Project Requirements (including the Infrastructure Plan and Master Utilities Plans) other Regulatory Approvals or Regulatory Requirements, or prior approvals (provided, however, that the Parties acknowledge the City has discretion to impose conditions consistent with Regulatory Approvals or Regulatory Requirements). Any Permitting Agency denial, or recommendation of denial to the Permitting Agency by any City Agency, of an approval shall include a statement of the reasons for such denial or recommendation of denial to the Permitting Agency. The Permitting Agency will immediately notify Developer of any disapproval.

(n) 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 4.6(f)** (Submittal of Improvement Plans for City Review). The Permitting Agency will, after consultation with Developer, have the right to grant reasonable extensions of time for City Agencies to review submittals and provide comments.

(o) 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 4.6(n)** (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.

(p) 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 this Section, subject to extension under **Subsection 4.6(n)** (Extension of Review Periods) shall be a basis for Administrative Delay under DDA Article 4 (Excusable Delay). 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, 2026 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, 2026. 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.

4.7. Inspections.

(a) Inspection Procedures. Before construction begins at the Project 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 Complete, ready for their intended use and have been completed substantially in conformity with the applicable Permit Set 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 (3) 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 twenty-one (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 will 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 Chief Harbor Engineer, as applicable) will compile punch lists and deliver them to the Developer within thirty (30) days after the City Engineer (or Chief Harbor Engineer) delivered the Inspection Request.

(d) 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 (3) business days after the Permitting Agencies receives inspection results from the Other Acquiring Agencies.

(e) Standards and Procedures for Acceptance.

(i) Any acceptance of streets and other Horizontal Improvements will occur according to the Subdivision Code and Subdivision Regulations, subject to any exceptions that may be authorized by the Public Works Director under the Subdivision Code, and as may be informed by the Acceptance and Maintenance MOA. The Acquiring Agency will accept full, complete, and functional Phase Improvements and Components thereof as designed in conformance with the Subdivision Regulations and utility standards, and constructed in accordance with the Permit Set, subject to any exceptions that may be authorized by the Public Works Director under the Subdivision Code.

(ii) From and after the Reference Date, the City Agencies, in consultation with Developer, will diligently 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 ROWs in which the individual utility system is installed, and the City's acceptance of such improvements and Public ROWs, as will be addressed in the Infrastructure Acceptance & Maintenance MOA.

(f) SOP Compliance of Phase Improvements under the DDA. Section 14.6 (SOP Compliance) of 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. 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.

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 included and previously addressed in Improvement Plans for Deferred Infrastructure), including Deferred Infrastructure, utility laterals and associated facilities serving the Vertical Improvements and connection to Horizontal Improvements, to ensure consistency, avoid development delays, safeguard public safety, and 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 Project Requirements and in accordance with the procedures governing Improvement Plans in this **Article**, 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.

(c) Public ROWs.

(i) The Parties will work with Developer to prepare and thereafter adopt the Mission Rock Event Management Plan to manage on-site event related travel and ensure street safety. The implementation of the Transportation Plan (and the Mission Rock Event Management Plan) will include Later Approvals, such as street closures of the Shared Public Way and a portion of Exposition Street to vehicular traffic in connection with identified events.

(ii) Developer and Vertical Developers may submit one or more annual street closure permit applications to the City for any set of street closures involving consistent uses and event management strategies. Street closure permit applications will be processed using the City’s existing event permitting process (commonly referred to as ISCOTT) that includes review by appropriate departments, including SFMTA, Public Works, SFFD and SFPD.

(iii) Developer acknowledges that:

(1) the right to use Public ROWs is not exclusive and that the City or Port may issue permits to other persons for use and occupancy, including events, with or without the consent of Developer; and

(2) the Port and City will require licensees to cover the costs of maintenance and operation attributable to any use or occupancy as a condition to issuing use permits.

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

(a) 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, SFPUC (through its General Manager) must review and approve, conditionally approve or reject the Master Utilities Plans submitted by Developer. SFPUC shall diligently and expeditiously review the Master Utilities Plans (or any subsequent revisions).

(b) 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.

(c) 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 approved applicable Improvement Plans for compliance with SFPUC requirements consistent with the Project Requirements, including the Infrastructure Plan and Master Utility Plans, in accordance with procedures governing Improvement Plans in this **Article**.

(d) 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 be able to provide electric power to the project. SFPUC agrees that electrical service will be reasonably available to meet the Project's needs and Developer's schedule, and that the projected price for electrical service and electric utility infrastructure cost allocations will be comparable to rates in San Francisco for comparable service. SFPUC will work with the Developer to provide temporary construction and permanent electric services pursuant to its Rules and Regulations for Electric Service.

Developer understands and agrees that all electricity for the Project Site (the "applicable service") will be provided by SFPUC Power under the terms of an Electric Service Agreement ("ESA") to be completed between SFPUC Power and Developer. Among other things, the ESA, in addition to the ESA's standard terms and conditions, will address some or all of the following: (a) development schedules and milestones for electric service; (b) termination rights and costs; (c) offsite infrastructure requirements, development, costs, and any cost allocation; (d) onsite infrastructure requirements, development, costs and cost allocations; and (e) Developer-provided space for SFPUC electric facilities. The Parties agree to act in good faith to finalize the ESA within 180 days from the Reference Date. If the Parties' good faith efforts do not result in a final ESA within 180 days, the Parties will agree to a reasonable extension of time to complete the ESA. If the Parties' diligent good faith negotiations to enter into an ESA as set forth above are unsuccessful, Developer may elect to pursue alternative service arrangements.

(e) 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 this **Article**. Neither the Port nor Public Works 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 will govern the Subdivision Map process.

6. OTHER COORDINATION.

6.1. Intentionally Omitted.

6.2. Role of Horizontal Improvements Project Coordinator. Developer and the Port may agree to utilize a third-party professional (the "Project Coordinator") to coordinate with Developer, the City 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, facilitating permit applications, including plan reviews and revisions, providing recommendations for acceptance of parks and open space, providing recommendations on the Port's issuance of an SOP Compliance Determination in accordance with the DDA and Schedule of Performance, and facilitating 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.

(a) 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.

(b) Contract Terms. Contracts with the Project Coordinator: (i) will, unless agreed otherwise by the Port 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 Port and the Project Coordinator agree; (iii) must provide for an annual review of contracted services; and (iv) must be terminable upon notice.

(c) Termination. Developer or the Port may request the termination of the Project Coordinator's contract by delivering a written statement of the basis for its request to the other Party. Before the Port will be obligated to terminate the contract, Developer and the Port 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.

7. ACCESS TO CITY PROPERTY.

7.1. Master Lease/Vertical DDA. Developer will have possession and control of the applicable portions of the Project Site under the Master Lease. Development Parcels will be released from the Master Lease immediately prior to execution of the Parcel Lease for the

Development Parcel. Each Vertical Developer's access rights for Deferred Infrastructure will be specified in a Vertical DDA. After termination of the Master Lease, access for construction, maintenance or warranty work for Horizontal Improvements will be provided by license, permit to enter or encroachment permit, as applicable, and on conditions to be specified in the DDA.

7.2. 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.

8. DEFAULTS AND REMEDIES.

8.1. Meet and Confer. Before a City Agency delivers a notice under Section 8.2 (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 (10) days of the date of such initial notice.

8.2. 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 ten (10) day period under Section 8.1 (Meet and Confer). The notice of default must state with reasonable specificity the nature of the alleged ICA Default, each provision under which the ICA Default is claimed to arise, and the manner in which the ICA Default may be cured.

8.3. Cure. The defaulting City Agency must cure the default within thirty (30) days after notice is delivered.

8.4. 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 8.2** (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.

8.5. 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: (i) for any default; or (ii) 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 Requirements governing the application, review, processing, or permitting of Improvements, including the Permit Streamlining Act (Cal. Gov't Code §§ 65920 et seq.).

8.6. Attorneys' Fees. In the event of any dispute or any legal action or other dispute resolution mechanism to enforce or interpret any provision of this ICA, each Party and/or the Developer will bear its own attorneys' fees and costs, whether or not there is a prevailing party(ies).

8.7. 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 Development Agreement or applicable Regulatory Requirements.

9. GENERAL PROVISIONS.

The following apply to this ICA in addition to the provisions in the Appendix (Part A).

9.1. 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 and County of San Francisco
City Hall, Room 348

San Francisco, California 94102

Attn: Director

Telephone No.:

Facsimile No.:

Email:

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

Attn: Public Works General Counsel

Telephone No.:

Facsimile No.:

Email:

Address for Port: Port of San Francisco
Pier 1
San Francisco, CA 94111

Attn: Chief Harbor Engineer

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:

Address for Developer: SWL 337 Associates
c/o San Francisco Giants
24 Willie Mays Plaza
San Francisco, CA 94107

Attn: Jack Bair, General Counsel

Telephone No.: 415-972-1755
Facsimile No.: 415-972-2317
Email: jbair@sfgiants.com

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 of Transportation

Telephone No.: 415-701-4281
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
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: SFPUC General Counsel

Telephone No.:
Facsimile No.:
Email:

(b) Courtesy Copies. Until the Port has issued a Determination of SOP Compliance 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 any City

Agency gives to any other City Agency under **Section 8.2** (Notice of Default) or **Section 9.2(c)** (Material Amendments) 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.

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

(a) Writing Required. This ICA may be amended only by an 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) Non-material Amendment. 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 non-material amendment to this ICA, after consultation with the directors or general managers of any affected City Agencies, subject to the following:

(i) The Mayor and the Port Director must obtain the 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 9.2(c)** (Material Amendments). More specifically:

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

(iii) SFMTA must give its prior 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.

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

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

(c) Material Amendments. Any ICA change that would materially: (i) increase the risk of a negative impact on the City's General Fund, as determined on behalf of the Mayor by the Controller; (ii) materially increase a City Agency's obligations, or materially lessen the primary benefits to the City, as determined by the Mayor; or (iii) 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.

(d) Infrastructure Plan and Transportation Plan. Amendments to the Infrastructure Plan and Transportation Plan will be processed and approved in accordance with **Subsections 9.2(a), (b) and (c).**

(e) Minor Deviations.

(i) Improvements Plans. Minor deviations in a set of Improvement Plans from the Project 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 affected Other 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 **Subsection 9.2(c)** (Material Amendments).

(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 Improvement Plan Submittal.

9.3. 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 9.3(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 not have any further rights or obligations under this ICA.

9.4. 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.

9.5. 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.

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

ICA Appendix

Developer's Consent of Seawall Lot 337 Associates, LLC

Consent of San Francisco Municipal Transportation Agency and attachments:

Consent of San Francisco Public Utilities Commission

ICA Exhibit A: Infrastructure Plan

ICA Exhibit B: Intentionally Omitted

ICA Exhibit C: Proposal for Non-Standard Infrastructure (For Discussion Purposes Only)

ICA Exhibit D: Proposal for Deferred Infrastructure (For Discussion Purposes Only)

ICA Exhibit E: Basis of Design Report

[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

By: _____
London Breed
Acting Mayor

Date: _____

By: _____
Angela Calvillo
Clerk of the Board

Date: _____

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

PORT:

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

By: _____
Elaine Forbes
Executive Director

Date: _____

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

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

CONSENT OF SEAWALL LOT 337 ASSOCIATES, LLC

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 Project Requirements, and be in accordance with the Development Agreement.

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

(e) 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. 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.

(f) 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.

(g) 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 Plans resubmittal a clouded copy 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; (v) provide the schedule required in Section 4.6(e) of the ICA; and (vi) 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 *FP § 9.2 (Port Accounting and Budget)*, *DA § 4.3 (Payment of Planning 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. 8 (Property Condition and Indemnities)*, *Master Lease art. 19*, and *DA § 4.4 (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:

SEAWALL LOT 337 ASSOCIATES, LLC,
a Delaware limited liability company

By: Giants Development Services, LLC
1. Its Member,

By: _____
Laurence M. Baer
Its Chief Executive Officer

Date: _____

Addresses for courtesy copies of notices:

Developer: Seawall Lot 337 Associates, LLC
c/o San Francisco Giants
24 Willie Mays Plaza
San Francisco, CA 94107
Attention: Jack Bair, General Counsel
Telephone: (415) 972-1755
Facsimile: (415) 972-2317
Email: jbair@sfgiants.com

With a Copy to:

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, Transportation 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 VIII A of the Charter.

2. Matters Covered. SFMTA agrees to the following.

(a) The Project Approvals, including the Infrastructure Plan and street widths, the Design Controls, and the Transportation Plan and the MMRP will govern matters under SFMTA jurisdiction, including, without limitation, Transportation Infrastructure described in the Infrastructure Plan, Design Controls, 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; and

(iii) inspect Transportation Infrastructure within twenty-one (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 (5) days after performing its inspection in accordance with the ICA.

(b) SFMTA will review and approve the Transportation 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 Transportation Related Mitigation Measures, as applicable, for safety, design, construction, testing, performance, training, documentation, warranties, and guarantees that are consistent with applicable Regulatory Requirements.

(c) SFMTA's approvals will be consistent with the DDA, the Infrastructure Plan, the Design Controls, 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 Controls 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 Transportation Plan, 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 (6) 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 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 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 of Transportation

Telephone No.:415-701-4281

Facsimile No.:

Email:

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

By: _____

Ed Reiskin
Director of Transportation

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: _____

Robin Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency

Board of Directors Resolution No. **XXXX**

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

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, Design Controls, 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) 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 Agreement between the Port, SFPUC and other relevant City agencies regarding the implementation of such responsibilities.

(c) 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:

San Francisco Public Utilities Commission
525 Golden Gate Ave
13th Floor
San Francisco, California 94102
Attn: General Manager

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:

San Francisco Fire Department
Department Headquarters
698 - 2nd Street
San Francisco, CA 94107
Attn: Fire Chief

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

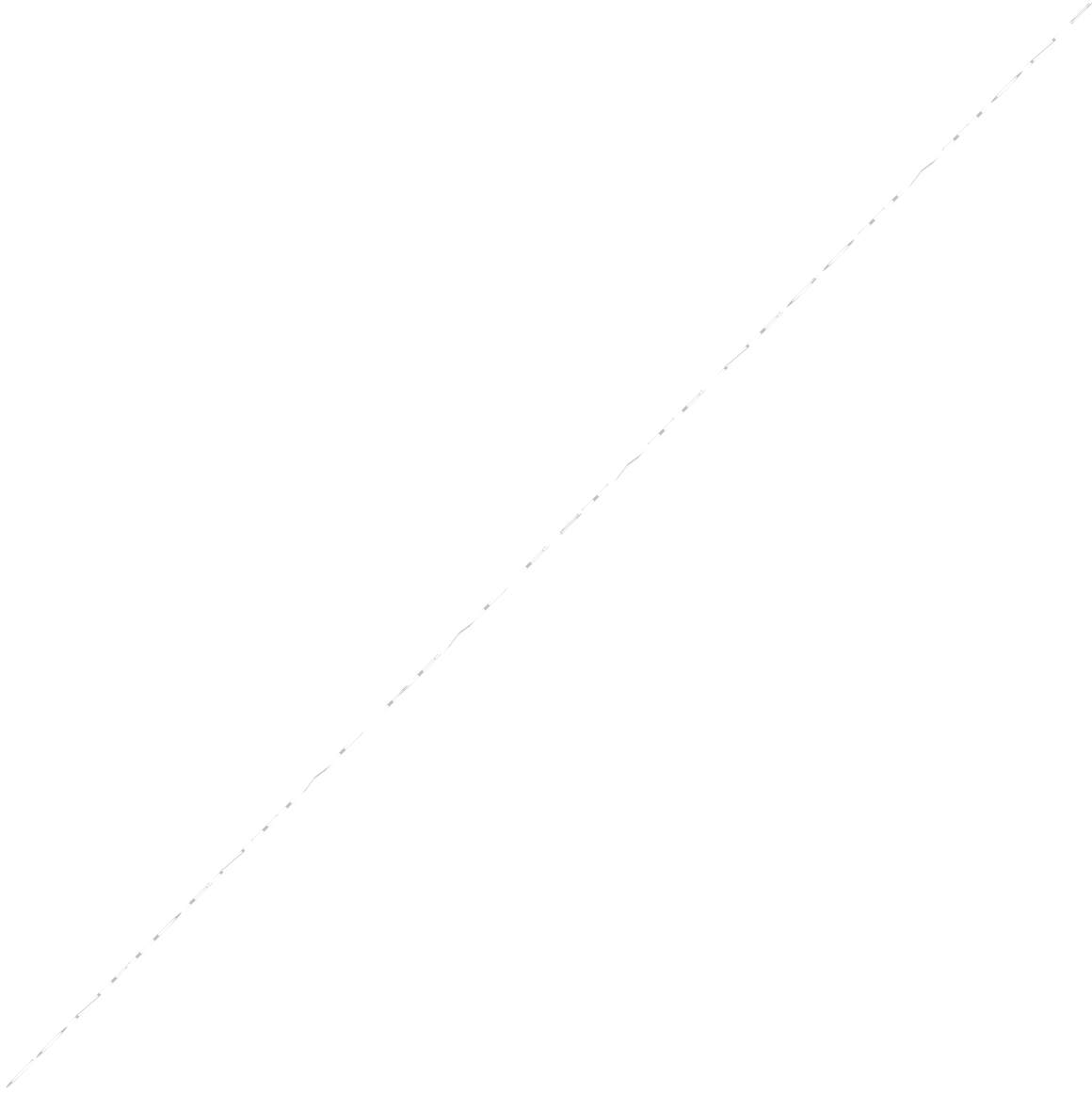
Date: _____

By: _____
Fire Marshal

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

ICA EXHIBIT A
Infrastructure Plan



ICA EXHIBIT B

[Intentionally Omitted]

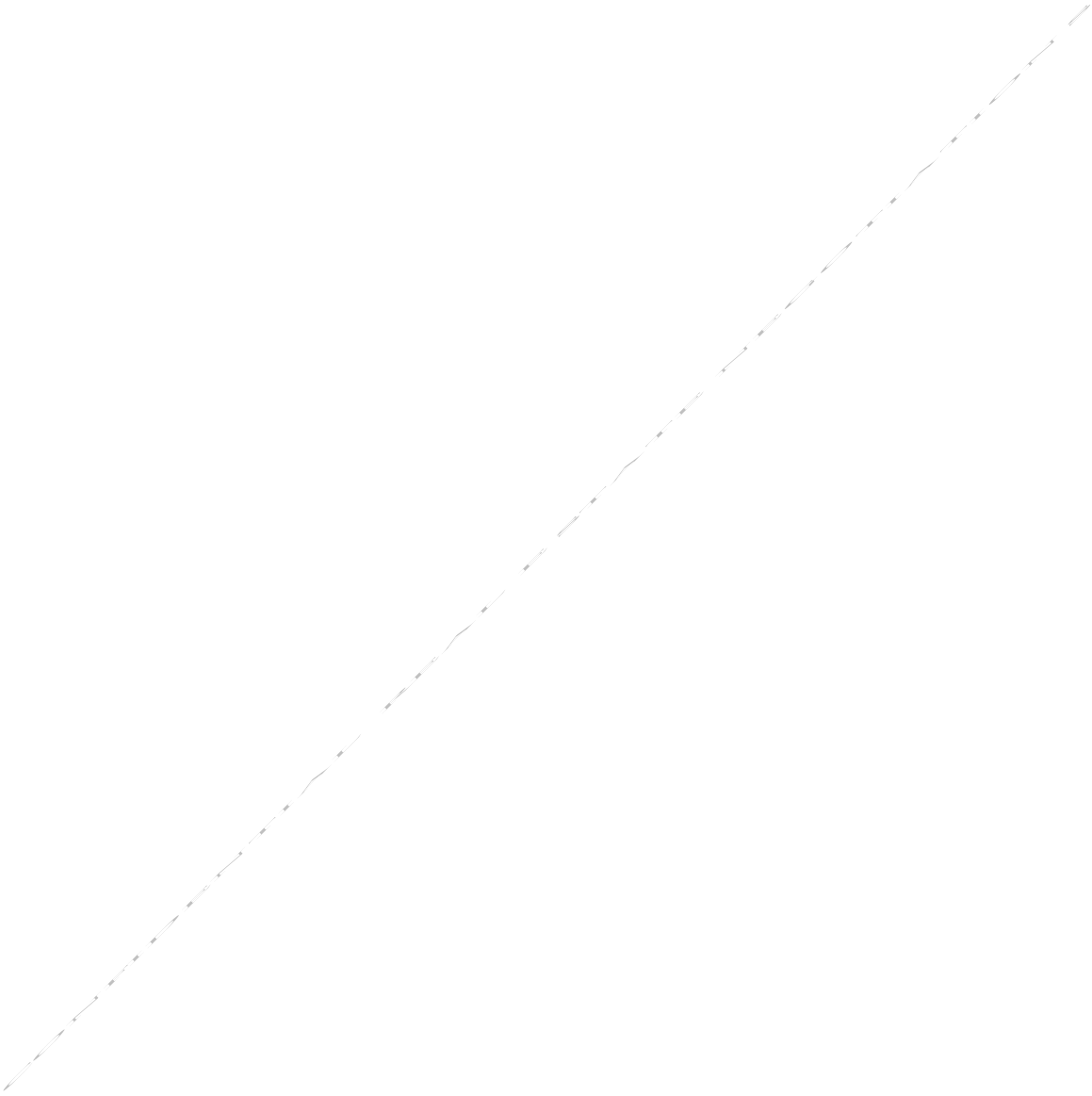


EXHIBIT C

PROPOSAL FOR NON-STANDARD INFRASTRUCTURE (For Discussion Purposes Only)

The Project proposes to use non-standard public improvements as described in the Infrastructure Plan. The attachment memorandum “Mission Rock – Public Infrastructure Design Exceptions and Modifications,” dated 7/11/2017 from BKF Engineers represents Developer’s preliminary analysis of necessary design modifications and exceptions to standard City design requirements and specifications.

Subject to the further development of the Structured Street Designs, and any changes that may be identified in connection therewith, and the negotiation and execution of the Infrastructure, Acceptance and Maintenance MOA, Developer’s proposal for non-standard infrastructure includes the following:

(a) Structured Street Superstructure and Structured Street Drainage. The Project Site is subject to unique geotechnical considerations due to the fact that significant portions of the Project Site are underlain by fill material, in-situ historic soils and compressed soils. To address these considerations, Developer proposes to use a U-shaped pile-supported concrete structure under and supporting the structured Public ROW ("**Structured Street Superstructure**"). The Structured Streets Superstructure will incorporate a drainage system to drain the U-shaped corridor via sub-drains designed to prevent accumulation of water within in the structured street sections. The structured street drainage system may also include sump pumps ("**Structured Street Drainage**"). Developer proposes that Public Works be the Permitting Agency for the Structured Street Superstructure, and associated Structured Street Drainage facilities. Upon completion, Developer proposes that the Structured Street Superstructure and Structured Street Drainage facilities would be acquired/accepted by the Port.

(b) Flexible Utility Connections and Flexible Street Improvements. Where structured streets interface with Public ROW not supported by such superstructures, differential settlement is likely to occur in the Public ROW; therefore Developer proposes to use flexible utility connections, which may include, e.g., flexible pipe materials, ball joints or settlement vaults (collectively, "**Flexible Utility Connections**"), and (2) sections of flexible street surface improvements ("**Flexible Street Improvements**").

(i) Developer proposes that Public Works be the Permitting Agency, and upon completion, subject to its approval of final design criteria, SFPUC accept the Flexible Utility Connections (including AWSS, low pressure water, recycled water, wastewater and stormwater), provided that in the event SFPUC fails to agree upon design criteria and accept the Flexible Utility connections, the Port will accept the Flexible Utility Connections. The Infrastructure Acceptance and Maintenance MOA, will address Developer’s warranty, including any

extended warranty, and under said warranty Developer's obligation to repair damage to the Flexible Utility Connections caused by settlement between the new Structured Street Superstructure supported Public ROW and the existing non-structured Public ROW.

(ii) Developer proposes that Public Works, subject to its approval of final design criteria, be the Permitting Agency for the Flexible Street Improvements. Upon completion, Developer proposes that Public Works accept the Flexible Street Improvements for operation and maintenance, provided that if Public Works fails to accept the Flexible Street Improvements they will be accepted by the Port. The Infrastructure Acceptance and Maintenance MOA will address Developer's warranty, including any extended warranty, and under said warranty Developer's obligation to repair damage to the Flexible Street Improvements, normal wear and tear excepted, caused by settlement between new Structured Super Structure supported Public ROW and the existing and non-structured Public ROW.

(c) Shared Public Streets. The Project includes shared public streets ("**Shared Public Streets**"), including a "Shared Public Way" and Terry A. Francois Boulevard. Generally, the Shared Public Streets are curb-less, and emphasize pedestrian traffic over vehicular traffic. Shared Public Streets are expressly contemplated by the City's Better Streets Plan.

(i) The Shared Public Streets are subject to approval of necessary Subdivision exceptions and design modifications. Developer's plan for the Shared Public Streets will address the following criteria, to the reasonable satisfaction of the Director of Public Works and the General Manager of the SFPUC, as will be further defined by standards included in the applicable Basis of Design:

A. Maintenance will be performed by Developer (Master Association) and maintenance costs will be funded by a project-based services CFD Tax and/or Master Association dues, or combination thereof in accordance with the DDA.

B. Street drainage meets SFPUC hydraulic performance standards;

C. SFPUC standards for maintenance access of SFPUC utilities are accommodated in the shared street design or alternative commitments for maintenance are provided; and

D. Verification that designs are ADA compliant.

Subject to the foregoing, Developer proposes that Public Works accept Shared Public Streets.

(d) HDPE. The Infrastructure Plan proposes to use HDPE throughout the Project Site. While HDPE is commonly used in infrastructure development, including elsewhere in San Francisco, the Subdivision Regulations have not been updated to authorize HDPE pipe. Developer's engineers assert that HDPE pipe offers numerous benefits, including durability and flexibility, as well as reduced propensity for leaks and superior flow characteristics. As such, Developer believes that there is good cause for use of HDPE pipe within the Project, and the use of HDPE pipe is consistent with sound engineering practices. In the event that SFPUC or any other affected City Agency determines that the use of HDPE pipe poses engineering concerns with respect to a given Improvement Plan Submittals, it shall promptly notify Developer.

ICA EXHIBIT D:
PROPOSAL FOR DEFERRED INFRASTRUCTURE
(FOR DISCUSSION PURPOSES ONLY)

This exhibit describes how the Developer proposes to implement Deferred Infrastructure, subject to Developer's attainment of all required City approvals. The City has not reviewed or approved this proposal and will review each submittal on a case by case basis. However, in the event that the City elects to approve any proposed Deferred Infrastructure concept, the Developer acknowledges that City would impose certain minimum requirements applicable to trenching, public right-of-way restoration, and street acceptance, such as those set forth in the Subdivision Regulations for Treasure Island and Yerba Buena Island (adopted by Public Works Order No. 185,562, approved December 21, 2016), Appendix A, Section VII.D.3.b (“Trenching and Public Right-of-Way Restoration and Acceptance of Street When Lateral Installations Deferred”), and notice of special restrictions regarding these requirements.

Developer is obligated to construct all of the Horizontal Improvements for the Project Site that are described in the Infrastructure Plan, but may assign responsibility for certain Deferred Infrastructure to Vertical Developers consisting of a limited amount of work adjacent to and/or serving their building development. Vertical Developer will perform under a contract with Developer and will be obligated to meet performance timelines tied to the occupancy of its buildings, but in no case later than the outside date of the DOA Schedule of Performance for the work. Certain types of Deferred Infrastructure, such as deferred laterals, may require an exception to the Subdivision Regulations to be granted by the Director of Public Works in accordance with the Subdivision Code, subject to City approval and possible conditions.

Developer will remain responsible for the construction and completion of the applicable Deferred Infrastructure until such time as the applicable Permitting Agency has approved the rights and obligations of Vertical Developer to construct and complete the Deferred Infrastructure separately from the rest of the associated Horizontal Improvements.

Developer shall remain the responsible party seeking reimbursement for Deferred Infrastructure as provided for in the Acquisition Agreement. Developer shall also remain the responsible party seeking formal acceptance of Deferred Infrastructure by the Board of Supervisors, unless otherwise provided in the Improvement Permit or Improvement Agreement.

Scope of Deferred Infrastructure

As described in DDA Section 14.5 (Deferred Infrastructure), the timely and efficient construction of Phase Improvements may require the construction of certain Deferred Infrastructure to be delayed until the adjacent Vertical Improvements are built. Deferred Infrastructure within Deferred Infrastructure Zones (as described below), would include, but not limited to, the following:

(i) the area between back-of-curb and the adjacent Development Parcel boundary (or if none, the adjacent Public Spaces);

(ii) bands up to 40 feet of Public Spaces, including but not limited to the paseos, Channel Lane and Channel Street, adjacent to Development Parcels; and

(iii) the area adjacent to Development Parcels for the installation of service infrastructure, including laterals, traps, air vents, clean-outs, meter boxes, irrigation facilities and associated pedestals, pull boxes, and secondary conduits, and street furnishings and landscaping.

Identification of Deferred Infrastructure within an application

Developer will identify elements of Deferred Infrastructure with the Basis of Design Report submitted for each Phase, including, to the extent known, the proposed scope and limits of work. With respect to the Deferred Infrastructure proposed in the Basis of Design Report, the City Agencies having regulatory jurisdiction will evaluate the proposed scope of work, limits of work (the "Deferred Infrastructure Zone" or "Zone"), and required time constraints. City Agencies, through the permitting agency, will conditionally approve with reasonable conditions, or disapprove the proposed Deferred Infrastructure. Commercially reasonable consideration will be given to the timing of proposed Deferred Infrastructure to coordinate with the City to minimize unnecessary excavations, and provided such coordination will not cause delay to the vertical development. Any disapproval must be accompanied with a letter describing the reason for disapproval.

Design of Deferred Infrastructure

Improvement Plans will propose a code compliant design consistent with the Infrastructure Plan and schematic design for Public Spaces or Public ROW. Design of Deferred Infrastructure that is conditionally approved in the Basis of Design Report application will continue to be developed in successive submittals of the Improvement Plans per the ICA. The limits of work for Deferred Infrastructure will be shown as "Not-in-Permit" in the Improvement Plans. Developer, or the assigned Vertical Developer, will then be obligated to obtain a permit for Deferred Infrastructure within the Zone. Vertical Developers may make adjustments to driveways, trees, service laterals, or other Deferred Infrastructure with the consent of Developer and subject to City approval prior to permitting.

Permitting of Deferred Infrastructure

There will be two permit reviews for Deferred Infrastructure - one in the Improvement Plans where Deferred Infrastructure is shown as Not-in-Permit, and the second in the permit for the Deferred Infrastructure or Vertical building application. Vertical building applications will be referred to City Agencies having jurisdiction over the work, and should be coordinated with Other City Agencies (including but not limited to SFPUC and SFMTA). This may include the requirement for a street improvement permit if the work involves "back of curb" or "service" infrastructure. For efficiency; the same City reviewers of the improvement plans should also review these building permit applications. Permit applications for third party utility services such as from PG&E gas, and the telecom companies will need to be included in Vertical building applications.

Construction of Deferred Infrastructure

For Deferred Infrastructure permitted by Vertical Developer, the construction will be sequenced much like an in-fill project, with the Deferred Infrastructure being built in the last quarter of those projects. Developer and Vertical Developer will execute a Vertical Coordination Agreement with Developer that includes provisions for Developer review and consent process for final Deferred Infrastructure plans, schedule of performance, Vertical Developer access to the Zone, and requirements for protections of improvements that have been previously installed by Developer, but not yet accepted. Final Inspection of Horizontal Improvements including Deferred Infrastructure will be performed by City in accordance with the formal acceptance process.

ICA EXHIBIT E
MISSION ROCK
BASIS OF DESIGN

Basis of Design Report for Infrastructure, including all off-site infrastructure to be developed in a Phase:

- Project Narrative
 - Summary of Applicable Standards
 - Tentative Map COA matrix
 - List of Requested Exceptions, including constraints/hardships and suggested solution
- Geotechnical Report, including:
 - Soil report
 - Groundwater level
 - Analysis of soil corrosivity
 - Data from site borings
- Structural Plans for Public Streets built on piles per ICA Section 4.3(b)
- General Site Grading Study with preliminary street grades
 - Topographic Map of the proposed subdivision and adjacent lands showing the existing conditions
 - Detailed field surveys to the extent detailed field surveyed topographic maps are required
 - Proposed grading plan
 - Location, height and type of proposed structural retaining walls
- Updates to Master Utility Plans/Calculations (as needed)
 - Low Pressure Water and Fire Flow Report
 - Recycled Water Report (as applicable)
 - AWSS Report (as applicable by SFPUC)
 - Hydrology and Hydraulics Report
 - Sanitary Sewer Analysis
- Conceptual Utility Layout (Horizontal plane)
 - Horizontal layout of drainage and sanitary facilities, including alignment, manhole covers, and other underground structures together with distance between them and direction of flow
 - Horizontal layout of pressurized utilities (LPW, RW, AWSS)
 - Dry utilities and private utilities
 - Layout of the street lighting
 - Facilities for the fire alarm and police communication system (DTIS)
- Horizontal layout of fire hydrants (to be coordinated with SFFD)

- Utility Cross Sections, showing clearances to curbs and each other
- Location and size of all required easements and rights-of-way needed to serve the above utilities
- Street Layout Plan (identify public and private streets)
 - Identify public (and private) streets
 - Proposed street sections with dimensions
- Vertical curve criteria and sight distance studies
- Turning templates for fire, bus and design vehicles
- Identify any vacation of public street or other conveyance of public property or rights-of-way which is proposed and the public entity is involved
- Traffic Operation and Circulation Plan with lane configurations
 - Transit routes and bus/shuttle stop locations/layouts
 - Bike lane cross sections
 - Parking and Loading Plan, including accessible parking and loading
- Conceptual Stormwater Control Plan layout, description and calculations
- Conceptual Phasing Study
- Identification of proposed parties responsible for ownership, maintenance, and jurisdiction, as well as the instruments for securing such responsibility and/or funding and the source of maintenance funds.

Other items to consider including:

- Statement of the improvements proposed to be constructed or installed and the tentative schedule for the start and completion thereof
- Identify any approval of any special use, any coastal zone or Bay Conservation and Development Commission permission, any certificate of appropriateness under Article 10 of the City Planning Code or any other permit, license or approval, other than a building, site, demolition or other permit under the Building Code, which is prerequisite to carrying out the subdivision or its proposed design or improvements
- Note any party responsible for ownership and maintenance of the actual infrastructure if that party differs from the proposed owner in fee
- Proposed connection between existing (including previous sub-phases) and proposed utilities.
 - Note any infrastructure improvements necessary to make the utility facilities operable, whether on-site or off-site, to be constructed together, and required under “adjacency” principles of the Plan
 - Mitigation measures adopted as part of CEQA approvals
 - Elements of Vertical Related Deferred Infrastructure will be identified as "Not-in Permit"

Developer and City may, as necessary or appropriate agree to modify the Basis of Design submittals as described in **Exhibit E**.