



**CITY AND COUNTY OF SAN FRANCISCO**

**Mark Farrell, MAYOR**

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**MEMORANDUM OF UNDERSTANDING  
(MISSION ROCK SUD FINANCING DISTRICTS)**

**BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH**

**THE CONTROLLER, AND**

**THE TREASURER AND TAX COLLECTOR,**

**AND**

**THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH**

**THE PORT COMMISSION**

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**BEN ROSENFELD, CONTROLLER**

**JOSE CISNEROS, TREASURER AND TAX COLLECTOR**

**ELAINE FORBES, PORT EXECUTIVE DIRECTOR**

\_\_\_\_\_, 2018

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**Exhibits:**

- A: Financing Plan with Appendix
- B: IFD Financing Plan and Appendix I

**MEMORANDUM OF UNDERSTANDING**  
(Mission Rock SUD Financing Districts)

This **MEMORANDUM OF UNDERSTANDING** (Mission Rock SUD Financing Districts) (this "**MOU**") is between the **CITY AND COUNTY OF SAN FRANCISCO**, acting through the Controller (the "**Controller**") and the Treasurer and Tax Collector (the "**Treasurer-Tax Collector**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, acting through the Port Commission (the "**Port**" or the "**Port Commission**"). This MOU describes procedures for implementing the allocation and administration of property tax increment and special taxes as described in the Financing Documents for financing districts that will be formed within the SUD. The Port Commission and the Board of Supervisors approved this MOU by Port Resolution No. \_\_\_\_\_ and Board Resolution No. \_\_\_\_\_ (the "**MOU Resolution**"), respectively, under Charter section B7.320.

Initially capitalized and other terms used but not defined in this MOU are defined in the Appendix to Transaction Documents for the Project (the "**Appendix**"), which contains definitions, rules of interpretation, and standard provisions applicable to all Transaction Documents, including this MOU.

**RECITALS**

**A.** The Port Commission and the Board of Supervisors approved a Disposition and Development Agreement (the "**DDA**"), which includes a Financing Plan, between Developer and the Port, by Port Resolution No. \_\_\_\_ and Board Resolution No. \_\_\_\_\_. The Board of Supervisors also adopted Ordinance No. \_\_\_\_\_, establishing the SUD. Under the Financing Plan, the Port will use Project Payment Sources to satisfy payment obligations to Developer relating to development of the Project Site. A copy of the Financing Plan with the Appendix is attached as **Exhibit A**.

**B.** IFD Law authorizes the Board of Supervisors to form one or more infrastructure financing districts within its jurisdictional boundaries and to use tax increment generated by infrastructure financing districts to finance authorized improvements.

**1.** By Ordinance No 27-16 (the "**IFD Ordinance**"), the Board of Supervisors established a waterfront district under Section 53395.8 of the IFD Law over all Port property, named City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco) (the "**IFD**") and designated project areas within the IFD. In the IFD Ordinance, the Board of Supervisors also approved an Infrastructure Financing Plan for the IFD (the "**IFD Financing Plan**").

**2.** On \_\_\_\_, 2018, the Board of Supervisors adopted Ordinance No. \_\_\_\_\_ (the "**Sub-Project Area Ordinance**"), establishing Project Area I ("**Project Area I**"), including Sub-Project Areas I-1 through I-13 (the "**Sub-Project Areas**") and approving Appendix I to the IFD Financing Plan ("**Appendix I**").

**3.** In the Sub-Project Area Ordinance, the Board of Supervisors authorized the IFD to use Allocated Tax Increment generated in the Sub-Project Areas and to issue, pay, and secure debt for the purposes and subject to the limitations described in Appendix I. The Allocated Tax Increment consists of the 64.588206% apportionment factor of the Proposition 13 base 1.00% tax rate-related Tax Increment generated in the Sub-Project Areas.

**4.** In the Financing Plan, the Port and Developer agreed that Allocated Tax Increment will be used to pay for debt service on Mello-Roos Bonds (the proceeds of which will be used to finance Horizontal Improvements), Horizontal Improvements, and Shoreline Protection Facilities. A copy of the IFD Financing Plan with Appendix I is attached as **Exhibit B**.

C. CFD Law authorizes the Board of Supervisors to form a community facilities district or special tax district within its jurisdictional boundaries, and to levy and collect Mello-Roos Taxes to finance public facilities and certain public services. The Board of Supervisors approved amendments to the San Francisco Special Tax Financing Law by Ordinance No. \_\_\_\_ (the “**Special Tax Ordinance**”). Under the Financing Plan, the Port will request that the Board of Supervisors establish the Mission Rock CFD over the SUD and authorize the Mission Rock CFD to levy Mello-Roos Taxes as described in the RMA Outline attached as Exhibit C to the Financing Plan.

D. Under the DDA, the Port will ground lease parcels in Seawall Lot 337 for construction of new buildings. In addition, the Port will enter into an interim lease for Pier 48 with an Affiliate of Developer while the Port seeks a development partner for the historic rehabilitation of Pier 48 under the terms of a long-term ground lease. Consequently, Mello-Roos Taxes will be levied on, and Allocated Tax Increment will consist of a portion of ad valorem taxes levied on, taxable parcels held by taxpayers by ground leases. In the MOU Resolution, the Board of Supervisors approved the levy of property taxes and special taxes on possessory interests in property in the Sub-Project Areas on the secured roll.

E. In this MOU, “**Financing Documents**” means the DDA, including the Financing Plan, IFD Financing Plan, Appendix I, the RMA and all ordinances and resolutions adopted by the Board of Supervisors in connection with the formation of the Sub-Project Areas and the Mission Rock CFD.

F. In this MOU, “**Debt**” means any bonds or other forms of indebtedness secured by Allocated Tax Increment or Mello-Roos Taxes from the Mission Rock CFD that are issued by the City on behalf of the IFD or the Mission Rock CFD to implement the Financing Documents. Debt may include DRP Advances, Port Capital Advances, and additional funding sources described in the Financing Plan to reimburse the Developer or to pay Developer pass-throughs for Horizontal Improvements.

G. In the MOU Resolution, the Board appointed the Port to act as the agent of the IFD and the Mission Rock CFD in the administration of Tax Increment and Mello-Roos Taxes with the authority and responsibility to:

1. direct the disbursement of Allocated Tax Increment, Mello-Roos Taxes and any Debt proceeds to implement the Financing Documents;
2. enter into an Acquisition Agreement with Developer that would establish the terms and conditions under which the Port and Other City Agencies would acquire Horizontal Improvements with Tax Increment, Mello-Roos Taxes and any Debt proceeds;
3. enter into one or more pledge agreements for the benefit of the Mission Rock CFD (each, a “**Pledge Agreement**”) pursuant to which the Port, as agent of the IFD with respect to the Sub-Project Areas, would pledge or agree to use Allocated Tax Increment to pay debt service on bonds issued for and on behalf of the Mission Rock CFD;
4. incur and repay indebtedness in the form of Advances of DRP Proceeds, Port Capital Advances and additional funding sources described in the Financing Plan; and
5. as agent of the Mission Rock CFD and the Sub-Project Areas, enter into an agreement with a financial institution (the “**Special Fund Administration Agreement**”) appointing it as the trustee (the “**Special Fund Trustee**”) to

receive, administer, and disburse Mello-Roos Taxes and Allocated Tax Increment in designated trust subaccounts and to disburse the funds at the Port's direction to implement the Financing Documents.

H. This MOU describes procedures to which the City and the Port have agreed to implement the Financing Documents and enable the Port to satisfy the Project Payment Obligation, and to finance Shoreline Protection Facilities.

## AGREEMENT

**1. Term.**

(a) Commencement. This MOU will be effective on the date it is fully executed.

(b) Expiration. The term of this MOU will end automatically on the date of the latest of the following to occur:

i. When all of the Allocated Tax Increment has been disbursed in accordance with IFD Law and Appendix I.

ii. When all of the Mello-Roos Taxes have been disbursed in accordance with the CFD Law, the Financing Plan, and the RMA.

iii. When all Debt has been defeased.

(c) Early Termination.

i. The Controller, the Treasurer-Tax Collector, and the Port each retains the right to terminate participation as a party to this MOU before its term expires under **Section 1(b)** by notice to the others as long as such termination will not adversely impact the ability of the Port to satisfy its obligations to Developer under the Financing Plan. The notice must be given at least six months before the desired early termination date stated in the notice.

ii. The noticed early termination date will be the effective date of the termination as to the noticing party unless one or both of the other parties request additional time to take any actions made necessary by termination. The terminating party will be obligated to grant any request for additional time that is reasonable under the circumstances.

iii. One party's notice of termination will not cause termination of this MOU as long as the Port and the remaining parties are able to implement the Financing Documents without the participation of the noticing party.

**2. Purpose.** The Controller, the Treasurer-Tax Collector, and the Port agree as follows:

(a) Implementation. A primary purpose of this MOU is to implement the Financing Documents. Implementation would be in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes of applicable law.]

(b) MOU as Complementary Financing Document. The Controller, the Treasurer-Tax Collector, and the Port intend this MOU to complement, and not to conflict with, the other Financing Documents, which will prevail over any conflicting provision in this MOU.

**(c) Cooperation.** In connection with this MOU, the Controller, and the Treasurer-Tax Collector agree to aid the Port, and the Controller, the Treasurer-Tax Collector, and the Port agree to:

- i. cooperate with one another;
- ii. implement expeditiously their obligations under the Financing Documents; and
- iii. undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Financing Documents are met during the term of this MOU.

**(d) Consistency with Applicable Law and Other Legal Obligations.** The Controller, the Treasurer-Tax Collector, and the Port agree that nothing in this MOU is intended to or will obligate any party to take any action that is not consistent with Applicable Law or any other legal obligations.

### **3. Specific Obligations .**

**(a) Levy of Taxes.** The Controller:

- i. agrees to levy ad valorem taxes on each Taxable Parcel on the tax roll;
- ii. agrees to levy Mello-Roos Taxes after the CFD Formation Proceedings are final, as requested by the CFD Administrator by July 31 of each City Fiscal Year; and
- iii. will deduct from the Allocated Tax Increment or Mello-Roos Taxes, as applicable reasonable costs incurred for performance of the Controller's obligations under this MOU.

**(b) Collection of Taxes.** The Treasurer-Tax Collector:

- i. agrees to collect ad valorem taxes levied in the Sub-Project Areas in accordance with Applicable Law;
- ii. will collect Mello-Roos Taxes levied in the Mission Rock CFD;
- iii. will charge the applicable Financing District for any costs that the Treasurer-Tax Collector incurs in connection with the issuance of Bonds by any Financing District, and any investment of Bond proceeds for which the Treasurer-Tax Collector is responsible; and
- iv. reserves the right to seek reimbursement from the applicable Financing District for additional costs incurred in the collection of ad valorem taxes from the Sub-Project Areas or Mello-Roos Taxes from the Mission Rock CFD.

**(c) Allocation of Tax Increment.** The Controller agrees to:

- i. deposit Allocated Tax Increment when received into a segregated fund and to budget and appropriate Allocated Tax Increment to the IFD in accordance with the Financing Plan, the IFD Financing Plan, Appendix I, and California Revenue & Taxation Code section 96.1;
- ii. pay the Allocated Tax Increment to the IFD with the next allocation following receipt of a report from the Treasurer-Tax Collector on the amount of Gross Tax Increment collected from the Sub-Project Areas;
- iii. disburse Allocated Tax Increment to the IFD to the extent collected as long as any Debt payable from Allocated Tax Increment is

outstanding or any Port obligations to Developer payable by Allocated Tax Increment are outstanding; and

**iv.** prepare and provide to the Port within 10 days after each December 10 and April 10 information about ad valorem tax collection from the Sub-Project Areas at the Port's request, and at reasonable intervals identified by the Port.

**(d)** Statement of Indebtedness for Sub-Project Areas.

**i.** The Port, the Controller, and the Treasurer-Tax Collector agree that the IFD's obligations to use the funds for the purposes specified in the IFD Financing Plan and Appendix I is a financial obligation under the IFD Law that the Port, as agent of the IFD with respect to the Sub-Project Areas, will include in each Statement of Indebtedness.

**ii.** The Treasurer-Tax Collector and the Controller each agrees not to dispute the amount of the debts shown on a Statement of Indebtedness prepared by the Port so long as the debts are consistent with the IFD Financing Plan and Appendix I.

**iii.** At the Controller's request, the Port, as agent of the IFD, will consult with the Controller in connection with the preparation of each Statement of Indebtedness.

**(e)** Debt Secured by Tax Increment. The Controller agrees to collaborate with the Port on any issuance of Debt secured by or payable from Allocated Tax Increment to implement the Financing Documents subject to IFD Law.

**(f)** Disbursement of Mello-Roos Taxes. The Controller agrees to deposit Mello-Roos Taxes when received into segregated funds and to allocate, budget, appropriate, and disburse to the Mission Rock CFD all Mello-Roos Taxes collected from the Mission Rock CFD for the purposes specified in the Financing Documents.

**(g)** Annual CFD Reports.

**i.** The Port, the Controller, and the Treasurer-Tax Collector agree that the Mission Rock CFD's obligations to use the funds for the purposes specified in the Financing Documents are financial obligations that the Port, as agent of the Mission Rock CFD, will include in each annual report required under CFD Law.

**ii.** The Treasurer-Tax Collector and the Controller each agrees not to dispute the amount of the debts shown on each annual Mission Rock CFD report prepared by the Port so long as the debts are consistent with the Financing Documents.

**iii.** At the Controller's request, the Port, as agent of the Mission Rock CFD, will consult with the Controller in connection with the preparation of each annual Mission Rock CFD report.

**(h)** Delinquent Mello-Roos Taxes. As long as this MOU remains in effect, the Treasurer-Tax Collector agrees to prepare and provide to the Port:

**i.** a list of Taxable Parcels in each CFD indicating whether Mello-Roos Taxes are current or delinquent within 10 business days after April 10 and December 10 each year; and

**ii.** the redemption tax roll for the Mission Rock CFD by July 15 each year.



(i) Debt Secured by Mello-Roos Taxes. The Controller agrees to collaborate with the Port on any issuance of Mello-Roos Bonds secured by or payable from Mello-Roos Taxes to implement the Financing Documents, subject to CFD Law and prior Port consultation with the Office of Public Finance about timing, amounts, and other matters relating to the Mello-Roos Bonds.

**4. Notices and Other Communications.**

(a) Manner of Notice. Any notice, request for consent, or response to a request for consent (any of these documents, a “**notice**”) given under this MOU will be effective only if in writing and given by delivering the notice in person or by sending it first-class certified mail with return receipt requested or by overnight courier return receipt requested, with postage prepaid, to the addresses specified below. Attempts to provide notice by email, telephone, or facsimile will not bind or be effective against any party.

(b) Addresses for Notice. Notices must be delivered to the following addresses, or at any other address designated by a party’s notice as a new address for notices:

Address for Port: Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Attn: Deputy Director of Finance  
Re: SF/Port MOU (Mission Rock SUD Financing Districts)  
Telephone: (415) 274-0400

And to: Office of the City Attorney  
Pier 1, Port of San Francisco  
San Francisco, CA 94102  
Attn: Port General Counsel  
Re: SF/Port MOU (Mission Rock SUD Financing Districts)  
Telephone: (415) 274-0400

Address for Controller: Office of the Controller  
City and County of San Francisco  
City Hall, Room 316  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Ben Rosenfield  
Re: SF/Port MOU (Mission Rock SUD Financing Districts)  
Email: ben.rosenfield@sfgov.org  
Telephone: 415-554-7500  
Fax No.: 415-554-7466

Address for Treasurer-Tax Collector: Office of the Treasurer and Tax Collector  
City and County of San Francisco  
City Hall, Room 140  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Treasurer and Tax Collector

Re: SF/Port MOU (Mission Rock SUD  
Financing Districts) Email:  
Telephone: 415-554-\_\_\_\_\_  
Fax No.: 415-554-\_\_\_\_\_

(c) Effective Date of Notice. Any notice under this MOU will be deemed to have been given:

- i. two business days after the date it is mailed if sent by first-class certified mail;
- ii. one business day after the date it is deposited for delivery if sent by overnight courier; or
- iii. on the date personal delivery is made or refused.

(d) Courtesy Copies. Until the Port has satisfied its payment obligations to Developer under the DDA, the parties agree to provide courtesy copies to Developer of any notices that any party gives to any other, at the same time and in the same manner as the original notice, at the address listed on Developer's Consent. Neither the City's nor the Port's failure to give Developer a copy of any notice given under this MOU will affect the validity or effective date of the notice.

(e) Representatives. Each of the Treasurer-Tax Collector, the Controller, and the Port agree to provide each other with the name and contact information for the individual within its department to address issues related to the IFD and Sub-Project Areas and the Mission Rock CFD.

**5. Third-Party Beneficiary.**

(a) Intended Third-Party Beneficiary. The parties agree that Developer is an intended third-party beneficiary of this MOU entitled to rely on and receive the benefits of this MOU to the extent the benefits relate to Developer's rights under the DDA. Developer may enforce against any party any provision of this MOU to the extent that it affects Developer's rights under the DDA, but no party will be liable to Developer for damages under this MOU. Successors to which Developer validly transfers any of its interests or rights under the DDA will be third-party beneficiaries of this MOU to the extent of their interest, subject to all limitations of the DDA and this MOU.

(b) Exclusive Benefit. Except as provided in subsection (a), this MOU 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.

**6. Amendments to MOU.**

(a) By the Parties. This MOU may be amended or modified only by a signed document, subject to Charter section B7.320.

(b) By Resolution. Under Charter section B7.320, the Board of Supervisors and the Mayor must approve any change affecting the amounts funds that must be transferred under this MOU.

(c) Developer's Consent Required. Developer's consent will be required for any amendment that affects the availability of Public Financing Sources to meet the Port's payment obligations to Developer under the DDA.

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Executed and effective as of the last date set forth below.

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, through the Controller

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, through the Port  
Commission

\_\_\_\_\_  
BEN ROSENFELD  
Controller

By: \_\_\_\_\_  
ELAINE FORBES  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**REVIEWED:**

**REVIEWED:**

**DENNIS J. HERRERA**  
City Attorney

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Joanne Sakai  
Deputy City Attorney

**CITY AND COUNTY OF SAN FRANCISCO,** a  
municipal corporation, through the Treasurer and  
Tax Collector

\_\_\_\_\_  
JOSE CISNEROS  
Treasurer and Tax Collector

Date: \_\_\_\_\_

**REVIEWED:**

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy City Attorney

**CLERK OF THE BOARD**

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ANGELA CALVILLO

Authorized by:

Port Resolution No. \_\_\_\_\_

Board of Supervisors Resolution No. \_\_\_\_\_

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**DEVELOPER'S CONSENT**

By signing below, [Name \_\_\_\_\_], on behalf of Seawall Lot 337 Associates, LLC ("Developer"):

1. consents to the Memorandum of Understanding (Mission Rock SUD Financing Districts) among the City and County of San Francisco, through the Controller and the Treasurer and Tax Collector, and the City and County of San Francisco, through the Port Commission (the "MOU") to which this consent is attached;
2. acknowledges that Developer is an intended third-party beneficiary of the MOU entitled to enforce the MOU subject to all of its limitations, including the limitation on damages specified in **Section 5(a)**, and
3. specifically agrees that the MOU validly applies to Developer and its successors and assigns; and
4. represents that Developer has authorized the undersigned to execute this consent on behalf of Developer and to bind Developer by this consent, and that the parties to the MOU are entitled to rely on all matters specified in this consent.

**DEVELOPER:**

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

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Address for courtesy copies of notices:

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**EXHIBIT A**

**Financing Plan with Appendix**

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**EXHIBIT B**

**IFD Financing Plan and Appendix I**

