



## MEMORANDUM

March 8, 2024

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Gail Gilman, Vice President  
Hon. Willie Adams  
Hon. Ed Harrington  
Hon. Steven Lee

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Informational Presentation for Port to Enter into Multiple Land Rights Agreements for China Basin Park and other Port-accepted Areas of the Mission Rock Phase 1 Project Site at Seawall Lot 337, Bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay.

**DIRECTOR'S RECOMMENDATION:** Information Only – No Action Required

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### EXECUTIVE SUMMARY

The Mission Rock project ("Project"), located at Seawall Lot 337, bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay, is nearing completion of Phase 1 horizontal and vertical construction activities. Phase 1 vertical construction includes four buildings: 2 primarily residential (totaling 537 rental units) and 2 commercial office/life science. Three of the four Phase 1 buildings have received a Temporary Certificate of Occupancy (TCO), an important milestone for the completion of the base buildings. The first residential apartment building, The Canyon, received its first residents on June 1, 2023.

The utilities, streets, and sidewalks supporting the Phase 1 buildings have been substantially completed to support the achievement of the TCOs and the waterfront park construction is ongoing with completion anticipated in spring 2024.

At completion of construction, the Phase 1 horizontal improvements including public open spaces, streets, sidewalks, and associated infrastructure, are candidates for acceptance by the Port Commission and Board of Supervisors (“BOS”). Before these improvements can be accepted, the DDA requires the Chief Harbor Engineer to make a determination that work has been completed as designed, within the timeframes specified in the Schedule of Performance (“SOP”) attached to the DDA. Within 45 days after the Chief Harbor Engineer’s determination of compliance (the “SOP Compliance Determination”), the Port must calendar a Port Commission hearing to accept horizontal improvements that will become Port assets. Port staff anticipates that the Developer will submit a request for SOP Compliance Determination in May 2024. Assuming the Developer submits SOP compliance in May and the Port deems it compliant, the Port would seek Port Commission approval of acceptance as soon as the July Port Commission meeting, with BOS acceptance to formally occur shortly thereafter. Any conditions to acceptance would be detailed in the request to the Port Commission. Under that timeline, the Developer would likely seek approval and acceptance of City-accepted items as soon as September at the BOS, with actual acceptance of improvements by the City likely to occur in November.

The horizontal Improvements are privately built infrastructure with the anticipation that the infrastructure will be dedicated to and accepted by public entities to own and maintain. Mission Rock’s horizontal improvements fall into two categories:

1. Improvements built to City standards that will be owned, maintained, and permitted by the City (Public Works, SFMTA, SFPUC, DT) (the “City Acceptance Items”). City Acceptance Items include standard infrastructure constructed within the Rights of Ways such as street curbs and gutters.
2. Improvements built to Port standards that will be accepted and owned by the Port (“Port Acceptance Items”). It is contemplated that an affiliate of the Developer will assume much of the Port’s maintenance responsibilities and some liability for Port Acceptance Items such as:
  - a. areas within Port open space (China Basin Park and Paseos),
  - b. interim improvements that are required to ensure site functionality and public safety that may be modified or reconstructed during future phases of the project (e.g. Channel Street, etc.) and
  - c. non-standard improvements located in City right-of-way (“ROW”) such as special pavement finishes, trash receptacles, and other street furniture/fixtures.

The Port’s obligations relative to Port Acceptance Items that are located in the ROW will be memorialized in a Master Major Encroachment Permit (“MMEP”) being negotiated between the Port and Public Works.

Pursuant to Resolution 19-39 which was approved on September 24, 2019, the Port Commission adopted a management approach to facilitate the day-to-day operation of the

Mission Rock parks and open spaces. This approach entails entering into a series of license agreements, leases, and other management or real property agreements, with affiliates of the Developer which will enable these affiliates to assume many of the Port's obligations related to these open spaces. The rationale for this approach is, primarily, to protect the Port from liability to the greatest extent when possible and to minimize the future burden on the Harbor Fund while ensuring that the spaces are well-maintained and remain open to the public. This approach allows the Port to retain ownership of the assets and assert indirect control of the parks and open space areas through Developer affiliates that are well-positioned to provide focused, on-site management and immediate neighborhood engagement.

To implement this management approach, and in parallel with the acceptance process, Port staff is negotiating various agreements to document the land and access rights that will be required for Developer affiliates and others to operate and maintain: (A.) China Basin Park; (B.) Port paseos and other public spaces ("Non-park open space"); (C.) utility infrastructure with PG&E and the private district utility provider, Mission Rock Utilities ("MRU"); and (D.) other miscellaneous and small-scale horizontal infrastructure improvements.

Per the DDA, the Developer is responsible for the maintenance of Port Acceptance Items until they are accepted by the Port Commission. Typically, upon acceptance and when the Port is required to maintain any of these improvements, the Mission Rock Community Facilities District ("CFD") Contingent Services Special Tax is available to provide ongoing funding. However, Port staff is negotiating with the Developer and its affiliates to privately maintain and operate Port Acceptance Improvements with funds from the Project occupants (similar to homeowner association dues) and under various agreements with the Port. The Developer and Port staff do not expect any public costs associated with their operations. Under this arrangement, the Contingent Services Special Tax levy would be \$0. If Developer affiliates stopped operating or failed to maintain the improvements for some other reason, then the Port would have the right to take over the performance of the obligations and would be able to increase the Contingent Services Special Tax to fund operations up to the maximum allowed amount.

Today's memorandum includes a project update as well as a description of the multiple agreements addressing land and access rights and maintenance obligations that the Port, City, Developer, and others will be negotiating over the next several months to allow for the comprehensive and cohesive management and operation of the Port Acceptance Items. The information below identifies these agreements, their purpose, and location within the Project site, as well as the anticipated approvals required for their implementation.

The following table of contents lists the topics that will be addressed in the remainder of this memorandum:

- I. Strategic Objectives
- II. Mission Rock Project Background
- III. Mission Rock Local Business Enterprise Update

- IV. Phase 1 Budget Update
- V. Acceptance and Acceptance Areas
- VI. Mission Rock Land and Access Rights Agreements:
  - A. China Basin Park Lease
  - B. Agreements for the Non-park open spaces including assignment of certain MMEP provisions
  - C. Utilities License Agreements
  - D. Miscellaneous other agreements

## STRATEGIC OBJECTIVES

The Mission Rock Project supports the Port's Strategic Plan including the following goals:

- **Productivity.** The redevelopment of a surface parking lot into a new Mission Rock neighborhood supports the goal of enhancing the economic vitality of the Port.
- **Resilience.** The Mission Rock project is elevating the site to prepare for anticipated future sea level rise and related flood levels and provide special tax sources for waterfront resilience projects across the entire Port.
- **Sustainability.** The on-site Blackwater Recycling System will treat wastewater for additional non-potable use within Mission Rock, reducing the Project's overall potable water usage by 13.9 million gallons annually.
- **Engagement.** Port staff and the Mission Rock project team provide regular updates on the Project to the Port's advisory groups.

## MISSION ROCK PROJECT BACKGROUND

The entitled Mission Rock project, upon completion of all phases, anticipates approximately 1,200 units of new, rental housing, 1.4 million square feet of new commercial and office space, the rehabilitation of historic Pier 48, as well as space for small-scale manufacturing, retail, neighborhood services, waterfront parks, and public infrastructure. The mixed-use Mission Rock Project is located on approximately 28 acres, including SWL 337 and Pier 48.

Approved in 2018 and now an active construction site, the Project reflects 14 years of effort, led by the Port Commission, Port and City staff, and Mission Rock Partners, a partnership between the San Francisco Giants and Tishman Speyer ("Developer").

Phase 1 currently includes the following program elements:

- 537 apartment units
  - 199 of which are affordable units
- 550,000 gross square feet office
- 52,000 gross square feet of retail
- District energy system located in Parcel A which will serve all of Mission Rock
- District scale non-potable water plant located in Parcel B which will serve all of Mission Rock's indoor and outdoor recycled water needs

Key public benefits include affordable housing, parks and open space, sustainability strategy goals, and achievement of workforce and local hire requirements and goals agreed upon in the Project’s Disposition and Development Agreement (“DDA”) and Development Agreement (“DA”).

**MISSION ROCK LOCAL BUSINESS ENTERPRISE UPDATE**

During 3Q23, Mission Rock Partners realized an increase in overall LBE participation on the entire Phase 1 project of \$2,866,755, for a cumulative total of \$166,349,249 in LBE awards, or 18.57% LBE Participation, while also increasing contract dollars awarded to minority- and women-owned local businesses.

The equity efforts through 3Q 2023 have resulted in a cumulative \$106,500,814 LBE value awarded to minority-owned and woman-owned companies, equal to approximately 64% of LBE contract values awarded. Though the construction phase of the project is ending, minority-owned LBE awards only saw a minor decrease from \$71,306,253 at the end of 2Q 2023, to \$71,200,421 cumulative through 3Q 2023, decreasing from 7.97% of total project awards to 7.95% of total project awards.

<b>CUMULATIVE: ALL AWARDS (THRU 2Q 2023)</b>	<b>BY QUARTER: ALL AWARDS* (3Q 2023)</b>	<b>CUMULATIVE: ALL AWARDS* (THRU 3Q 2023)</b>
<ul style="list-style-type: none"> <li>● <b>LBE VALUE:</b> \$163,482,495</li> <li>● <b>NON-LBE AWARDS:</b> \$728,614,477</li> <li>● <b>OVERALL:</b> \$892,096,972</li> </ul>	<ul style="list-style-type: none"> <li>● <b>LBE VALUE:</b> \$2,866,755</li> <li>● <b>NON-LBE AWARDS:</b> \$594,395</li> <li>● <b>OVERALL:</b> \$3,461,150*</li> </ul>	<ul style="list-style-type: none"> <li>● <b>LBE VALUE:</b> \$166,349,249</li> <li>● <b>NON-LBE AWARDS:</b> \$729,208,872</li> <li>● <b>OVERALL:</b> \$895,558,121*</li> </ul>
● <b>LBE PARTICIPATION: 18.28%</b>	● <b>LBE PARTICIPATION: 82.83%</b>	● <b>LBE PARTICIPATION: 18.57%</b>
<p><b><u>Overall Vendor Count:</u></b></p> <ul style="list-style-type: none"> <li>○ 415 Vendors Overall (+13 added); including 102 LBE Vendors (+5 added)</li> <li>○ 66 woman-owned businesses contracted (+2 added); maintaining 34 woman-owned LBEs (+0 added)</li> <li>○ 84 minority-owned businesses contracted (+1 added); maintaining 61 minority-owned LBEs (+0 added)</li> </ul>		

*\* Note that the dollars reported above are dollars under contract as of September 30, 2023. The Developer has also voluntarily reported to the Port that its contracts with the general contractors (GCs) at Mission Rock include “LBE Pipeline” values which are subcontracted values in prime subcontracts that are contractually committed to LBE businesses. The Developer reports that an additional \$1.01M of these LBE Pipeline values are in place, through the end of Phase 1. This combined LBE Value of LBE Awarded + LBE Pipeline increases LBE Participation to 18.69%.*

Of note, the LBE participation percentages are subject to fluctuation from quarter to quarter given several factors including the timing of awards and separate parcel schedules. Mission Rock Partners continues to work closely with the Port of San

Francisco, the San Francisco Contract Monitoring Division (CMD), General Contractors, to ensure LBE and project equity goals are met. Several barrier mitigation strategies are available to be implemented and are designed to help increase opportunities for business owners from historically underrepresented communities. Mission Rock Partners remains committed to employing these strategies to meet these goals.

**Mission Rock Development Contract Awards Through September 30, 2023**

<b>Amount Awarded</b>	<b>\$895,558,121.27</b>	<b>Percentage</b>
Awarded to Small & Micro LBE	\$152,803,358.78	17.06%
Awarded to SBA LBE (incl. Graduated)	\$13,545,890.62	1.51%
Awarded to Non-LBE	\$729,208,871.86	81.43%
<b>LBE Award by Size</b>	<b>\$166,349,249.40</b>	<b>Percentage</b>
Awarded to Micro LBE	\$77,502,574.76	8.65%
Awarded to Small LBE	\$75,300,784.03	8.41%
Awarded to SBA-LBE (incl. Graduated)	\$13,545,890.62	1.51%
<b>LBE Award by Type</b>	<b>\$166,349,249.40</b>	<b>Percentage</b>
Awarded to MBE-LBE	\$71,200,420.62	7.95%
Awarded to WBE-LBE	\$35,300,393.57	3.94%
Awarded to OBE-LBE	\$59,848,435.21	6.68%

**Mission Rock Development Contract Awards to  
Minority-Owned Companies through September 30, 2023**

<b>Minority-Owned: LBE's</b>	<b>Amount Awarded</b>	<b>% of MBE</b>	<b>% of LBE</b>	<b>% of All</b>
African-American	\$36,377,265.90	44.59%	23.81%	4.06%
Arab-American	\$151,807.95	0.19%	0.10%	0.02%
Asian-American	\$14,741,132.40	18.07%	9.65%	1.65%
Latino-American	\$30,310,287.09	37.15%	19.84%	3.38%
Native American/ Indigenous People	\$--	0.00%	0.00%	0.00%
<b>Minority-Owned: All</b>	<b>Amount Awarded</b>	<b>% of All</b>		
African-American	\$37,508,399.30	4.19%		
Arab-American	\$2,012,894.95	0.22%		
Asian-American	\$21,442,018.53	2.39%		
Latino-American	\$33,278,439.91	3.72%		
Native American/ Indigenous People	\$3,395,594.00	0.38%		

## PHASE 1 HORIZONTAL IMPROVEMENT BUDGET FY'23-Q4

At the October 10, 2023, Port Commission meeting, the Commission approved a Phase 1 Horizontal Improvement budget increase from \$184.1M to a revised amount of \$218.5M. Approximately \$19.6M is attributable to Port and City Costs, including services provided by City agencies and Port staff and consultants. In approving the revised budget, the Commission requested staff provide quarterly updates to track actual expenses against the budget going forward. The most recent update occurred on December 19, 2023, and included Port and City costs through the quarter ending June 2023 (Q4 FY 2023), as well as estimated projections through the completion of Phase 1, which is expected to occur in 2025.

Developer and staff analysis indicates that Phase 1 is currently on budget with respect to both the overall Project and Port and City costs. The December 19, 2023 budget update report indicated \$3.5M remaining as a contingency at project completion, as well as a surplus (savings) of \$72K in City agency costs. The following tables provide additional details supporting staff analysis. Port Finance staff will continue working closely with the Port Development and Engineering teams to monitor Phase 1 project costs through completion.

### Horizontal Improvement Project Budget Update

Cost Item	2023 APPROVED Budget	October 2023			November 2023			Variance		
		Uncommitted	Expected Future Commitments	Anticipated Balance Remaining	Uncommitted	Expected Future Commitments	Anticipated Balance Remaining	Uncommitted	Expected Future Commitments	Anticipated Balance Remaining
<b>Hard Costs</b>										
Hard Costs	\$ 78,198,463	\$ 7,356,569	\$ 6,695,992	\$ 660,577	\$ 4,726,345	\$ 4,367,164	\$ 359,181	\$ (2,630,224)	\$ (2,328,828)	\$ (301,396)
Inland CBP	\$ 40,657,253	\$ 5,902,024	\$ 4,894,493	\$ 1,007,531	\$ 4,711,581	\$ 3,782,108	\$ 929,473	\$ (1,190,443)	\$ (1,112,385)	\$ (78,058)
Owner Costs	\$ 2,587,204	\$ 710,232	\$ 710,232	\$ -	\$ 710,232	\$ 911,759	\$ (201,527)	\$ -	\$ 201,527	\$ (201,527)
<b>Total Hard Costs*</b>	<b>\$121,442,920</b>	<b>\$ 13,968,825</b>	<b>\$ 12,300,717</b>	<b>\$ 1,668,108</b>	<b>\$ 10,148,158</b>	<b>\$ 9,061,031</b>	<b>\$1,087,127</b>	<b>\$ (3,820,667)</b>	<b>\$ (3,239,686)</b>	<b>\$ (580,981)</b>
<b>Soft Costs</b>										
General	\$ 50,158,218	\$ 3,794,397	\$ 3,794,397	\$ -	\$ 3,481,818	\$ 3,481,818	\$ -	\$ (312,579)	\$ (312,579)	\$ -
City Reimbursements	\$ 19,577,000	\$ 4,571,458	\$ 4,571,458	\$ -	\$ 6,037,541	\$ 6,037,541	\$ -	\$ 1,466,083	\$ 1,466,083	\$ -
Developer Items	\$ 23,787,637	\$ 4,475,947	\$ 4,475,947	\$ -	\$ 4,475,947	\$ 4,475,947	\$ -	\$ -	\$ -	\$ -
Open Space	\$ 1,004,580	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Soft Cost Contingency (Project Contingency)	\$ 2,500,000	\$ 2,500,000	\$ -	\$ 2,500,000	\$ 2,500,000	\$ -	\$ 2,500,000	\$ -	\$ -	\$ -
<b>Total Soft Costs</b>	<b>\$ 97,027,435</b>	<b>\$ 15,341,802</b>	<b>\$ 12,841,802</b>	<b>\$ 2,500,000</b>	<b>\$ 16,495,306</b>	<b>\$ 13,995,306</b>	<b>\$2,500,000</b>	<b>\$ 1,153,504</b>	<b>\$ 1,153,504</b>	<b>\$ -</b>
<b>Total</b>	<b>\$218,470,355</b>	<b>\$ 29,310,627</b>	<b>\$ 25,142,519</b>	<b>\$ 4,168,108</b>	<b>\$ 26,643,464</b>	<b>\$ 23,056,337</b>	<b>\$3,587,127</b>	<b>\$ (2,667,163)</b>	<b>\$ (2,086,182)</b>	<b>\$ (580,981)</b>

**Port and City Costs Update through FY'23-Q4**

<b>City Agency</b>	<b>FY19-FY22</b>	<b>2023*</b>	<b>2024</b>	<b>2025</b>	<b>Phase 1</b>
SFPW	\$ 3,301,104	\$ 1,065,134	\$ 1,007,312	\$ 300,563	\$ 5,674,112
Port Staff	\$ 1,555,301	\$ 842,380	\$ 785,264	\$ 806,925	\$ 3,989,871
Consultants	\$ 1,996,539	\$ 964,701	\$ 626,976	\$ 236,320	\$ 3,824,535
City Attorney	\$ 2,519,613	\$ 216,906	\$ 341,464	\$ 282,961	\$ 3,360,944
Other	\$ 1,506,172	\$ 418,263	\$ 497,372	\$ 232,138	\$ 2,653,945
<b>Total</b>	<b>\$ 10,878,730</b>	<b>\$ 3,507,384</b>	<b>\$ 3,258,388</b>	<b>\$ 1,858,906</b>	<b>\$ 19,503,408</b>
<i>*Q4 -23 actuals occurred after Phase 1 Budget Approval in October 2023</i>					
Approved City Cost Budget Total			\$ 19,575,533		
Forecasted City Cost Budget 1.24			\$ 19,503,408		
Surplus / (Overage)			\$ 72,125		

**ACCEPTANCE AND ACCEPTANCE AREAS**

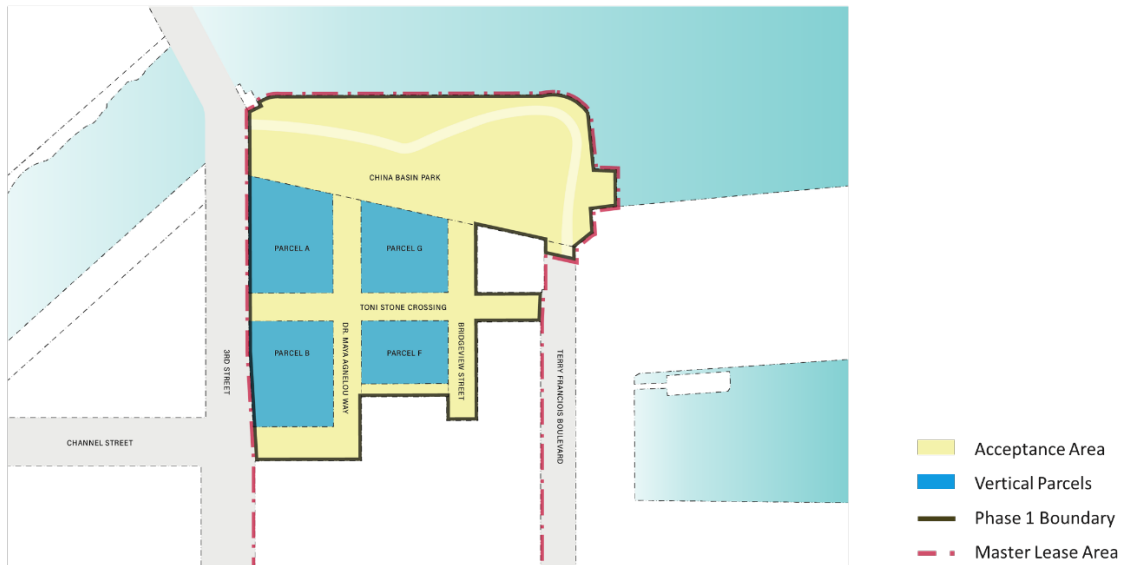
The horizontal improvements at Mission Rock including utilities, streets, and sidewalks surrounding the Phase 1 buildings, have been substantially completed to support the achievement of the buildings' TCOs. The waterfront park construction is ongoing with completion anticipated in April 2024. At the completion of construction, the Phase 1 horizontal improvements including public open spaces, streets, sidewalks, and associated infrastructure are candidates for acceptance by the Port Commission and Board of Supervisors ("BOS").

Before these improvements can be accepted, the Chief Harbor Engineer must determine whether work has been completed as designed, within the timeframes specified in the Schedule of Performance ("SOP") attached to the DDA. The Chief Harbor Engineer must determine compliance within 45 days of the Developer's request (the "SOP Compliance Determination"). Upon the Chief Harbor Engineer's affirmative SOP Compliance Determination, the Port must schedule consideration of acceptance of the Port Acceptance items at the next regular Port Commission Meeting. Port staff anticipates that the Developer will submit a request for SOP Compliance Determination in May 2024. Assuming the Developer submits SOP compliance in May and the Port deems it compliant, the Port would seek Port Commission approval of acceptance as soon as the July Port Commission meeting, with BOS acceptance to formally occur shortly thereafter. Any conditions to acceptance would be detailed in the request to the Port Commission. Under that timeline, the Developer would likely seek approval and acceptance of City-accepted items as soon as September at the BOS, with actual acceptance of improvements by the City likely to occur in November.

The following diagram depicts the Phase 1 project site and all the associated horizontal improvements that are anticipated to be accepted:



## Horizontal Improvements - Acceptance Area



Prior to acceptance, the Phase 1 project area is leased to MRP under a Master Lease. Upon acceptance of the horizontal improvements, the infrastructure and areas will be removed from the Master Lease. It is important to note that the parcels for Buildings A, B, F, and G were previously removed from the Master Lease and are now subject to four long-term ground leases with the vertical project owners which were executed in 2020.

Port and City staff, along with Developer, have determined which elements of the horizontal improvements will be owned, maintained, and permitted by the City (Public Works, SFMTA, SFPUC, DT), and which elements will be owned by the Port due to their location on Port-owned land (such as China Basin Park), or non-City standard design (such as flush-curb streets and special street furniture). The remainder of this memo outlines how the different types of horizontal improvements will be managed, maintained, and paid for once completed.

### MISSION ROCK LAND AND ACCESS RIGHTS AGREEMENTS

Port staff anticipates that Port-owned horizontal infrastructure will be maintained and operated through a series of license agreements, leases, and other property agreements that document land and access rights as well as maintenance standards. Pursuant to Resolution 19-39, the Port Commission adopted a management approach to facilitate day-to-day management of the Mission Rock parks and open spaces, which entails fulfilling the Port's obligation to maintain and operate these open space areas by entering various agreements with affiliate entities of the Developer. These affiliates will activate and maintain the Mission Rock open space, providing focused, on-site management, and immediate neighborhood engagement. In keeping with Resolution 19-39, this approach allows the Port to retain ownership of the assets and assert indirect control of the parks and open spaces to ensure the spaces are well-maintained and remain open to the public.

To implement this management approach, and in parallel with the acceptance process, Port staff is negotiating various agreements to document the land and access rights to operate and maintain the following spaces and items: (A.) China Basin Park, (B.) Port paseos and other public spaces (“Non-park open space”), (C.) utility infrastructure with PG&E and MRU, and (D.) other miscellaneous and small-scale horizontal improvements.

The following table and narrative provide a general description of the various agreements required to be in place upon acceptance to limit the Port’s maintenance obligations, costs, and liability. As directed by the Project documents and in consultation with the City Attorney, Port staff will return to the Port Commission for formal consideration of each of these agreements upon completion of negotiations with the Developer.

**Land Rights Agreements At Mission Rock**

<b>Agreement</b>	<b>Parties</b>	<b>Primary Purpose</b>
Park Lease	Port & Developer Affiliate	<ul style="list-style-type: none"> <li>- Transfers maintenance and liability obligations for China Basin Park from Port to Park Tenant</li> <li>- Permits sponsorships and event programming to generate sufficient revenues to support first-class operation of the public park.</li> <li>- Provides for Park Tenant to assume obligations of the Recycled Water Services Agreement.</li> <li>- Sets forth maintenance and operational standards/requirements.</li> </ul>
Agreement for Non-park Open Space	Port & Developer Affiliate	<ul style="list-style-type: none"> <li>- Transfers maintenance and certain liability obligations for pedestrian paseos from Port to Developer Affiliate.</li> <li>- Generally conforms to Park Lease with respect to sponsorships and event programming with certain limitations due to tax-exempt bond financing used for construction of the horizontal improvements and infrastructure in the paseos.</li> <li>- Sets forth maintenance and operational standards/requirements.</li> </ul>
Utility Agreements	Port & PG&E	<ul style="list-style-type: none"> <li>- Permits PG&amp;E access rights for repair and maintenance of utility lines that run through Port-owned land, which serve Parcel F and Parcel G (two gas lines) and the Third Street Pilot House (electricity line).</li> </ul>
	Port & MRU	<ul style="list-style-type: none"> <li>- Permits MRU access rights for repair and maintenance of private infrastructure (sanitary sewer, recycled water and district energy lines) which run throughout the project site and service the open space and building parcels.</li> </ul>
<p><i>NOTE: In addition to the major categories listed above, several secondary agreements are being drafted/negotiated to document access and other rights for City agencies and various other parties who require access rights for use and maintenance purposes.</i></p>		

**PARKS LEASE WITH MISSION ROCK COMMONS AT CHINA BASIN PARK**

China Basin Park is the Project’s flagship 4.5-acre waterfront open space that is currently under construction with an anticipated completion date of April 2024. The Port anticipates leasing China Basin Park to a Developer affiliate, in this instance to be called Mission Rock Commons (“MRC”). MRC will actively program China Basin Park and obtain sponsorships to raise revenues that fund ongoing park maintenance and operations.

Port staff and MRC are currently negotiating a lease of China Basin Park (the “Park Lease”). The Park Lease structure will provide MRC with sufficient terms and control of the park to allow various types of sponsorships within China Basin Park boundaries. Sponsorship is expected to be a critical part of creating a financially successful, well-maintained, and activated public park. The Park Lease will be rent-free, but MRC will take on maintenance responsibilities and some liability and repair obligations for China Basin Park during the Park Lease term.

MRC will also take on all obligations of the Recycled Water Services Agreement (“RWSA”) between the Port and Mission Rock Utilities (“MRU”) via an assignment under the Park Lease. Pursuant to Port Commission Resolution 22-54 under the RWSA the Port will purchase recycled black water (i.e. wastewater from sinks, showers, toilets, and other building uses) from MRU to use for non-potable uses such as irrigation in Port-owned spaces. Through the Port’s assignment to MRC, MRC will assume the Port’s role and will purchase and pay all costs under the RWSA, projected to be \$672k for the first year of operations. By utilizing recycled water for China Basin Park and other Port-owned spaces under the RWSA, MRC will reduce water usage by nearly 1.5 million gallons each year.

Key provisions of the Park Lease include a term of up to 30 years inclusive of tenant option rights to extend the term, sponsorship guidelines, event guidelines, annual Port approval process for the China Basin Park budget process, and termination provisions. Port staff will return to the Port Commission later in 2024 to provide full details and request approval of this agreement.

Note that the Developer intends to open CBP to the public as soon as is practical upon completion of construction. This will likely occur before the formal acceptance of the park and before the execution of the Park Lease. In consultation with the City Attorney’s Office, Port staff has determined that pre-acceptance operations and maintenance of the park, in a manner consistent with the draft Park Lease that is currently under negotiation, is consistent with what is allowed under the Master Lease, which will be the governing document until acceptance.

## **AGREEMENTS FOR NON-PARK OPEN SPACES**

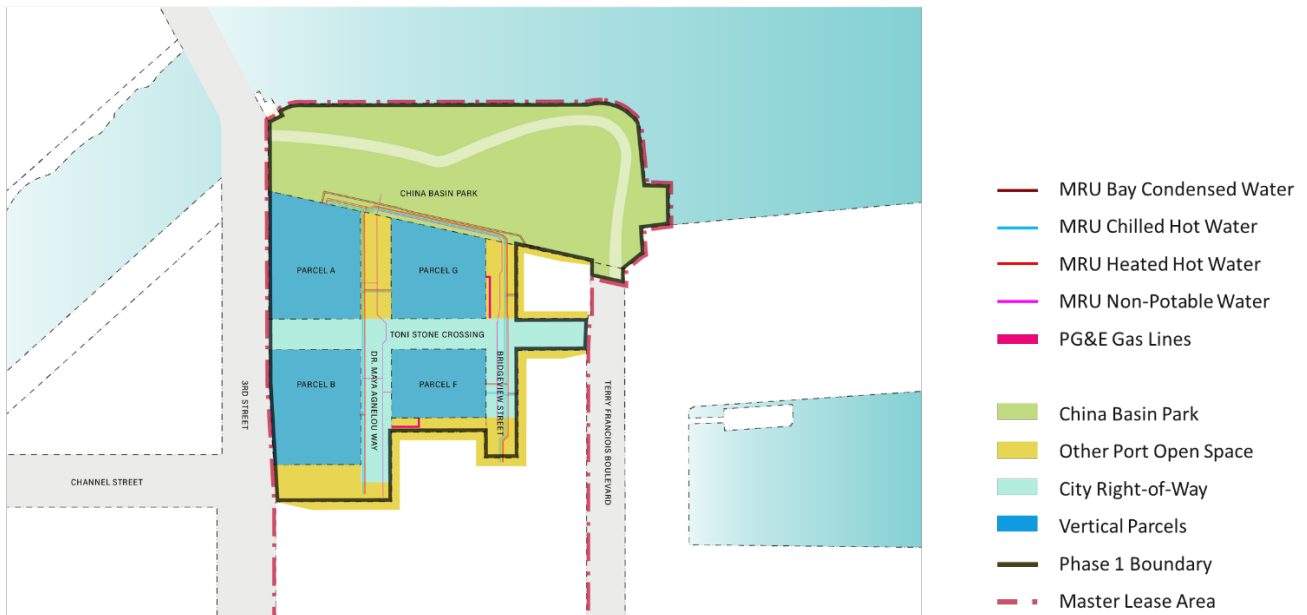
In addition to China Basin Park, the Project includes 3.5 acres of public open space and pedestrian paseos planned to be activated and available for programming and outdoor dining. Approximately 0.6 acres or 26,000 square feet of this open space has been constructed in Phase 1. These areas contain specialized and/or non-standard improvements and are therefore accepted by the Port as opposed to the City.

To ensure consistency of the community’s experience at both the Port-owned open spaces and at China Basin Park, the Port anticipates that MRC will also maintain and oversee operations of the Port’s public open space within the Project. To allow for maintenance and operations, the Port is negotiating the terms of any agreements needed to provide access rights to MRC to maintain and operate these areas in a manner and standard consistent with the Park Lease. It is contemplated that the agreements shall generally mirror the Park Lease in terms of maintenance and operational standards, be “no-fee” agreements, and transfer appropriate levels of maintenance obligations and premises liability to the licensee (MRC). Port staff will return to the Port Commission later in 2024 with proposed details of the agreements and a request to consider approval.

In addition to the Port-owned open spaces, certain horizontal improvement infrastructure will be accepted that is located in the ROW and which includes non-City standard items such as special paver finishes, trash receptacles, and other street furniture and fixtures. This infrastructure is included in the “Port Acceptance Items” category and as such, Port will enter into a Major Master Encroachment Permit (MMEP) with the Department of Public Works for the associated maintenance and liability obligations of these items. Port anticipates delegating/assigning any Port maintenance obligations under the MMEP to a Developer affiliate based on its anticipated management activities at the project.

Below is a visual representation of the Phase 1 Acceptance areas once they have been accepted and the land rights agreements have been executed.

## Land Rights Agreements Post-Acceptance



## UTILITIES LICENSE AGREEMENTS

### PG&E Utilities:

Two buildings (one on Parcel F and one on Parcel G) are served by two separate gas lines. The gas lines connect each respective building with gas lines in the City ROW and cross through the Port open space to do so. Likewise, a PG&E electric line runs between Third Street and the Third Street Bridge Pilot House, through China Basin Park. Upon acceptance of the horizontal improvements, China Basin Park and Port open space will be removed from the Developer’s Master Lease with the Port. Port staff anticipates offering PG&E access rights from the Port to service and maintain the gas and electric infrastructure in the park and open space.

Port policy disfavors conveying permanent land rights like selling property or creating an easement, which is complicated under state law. Under the Burton Act, the preferred mechanism to allow property rights is through long-term leases or licenses. Further, rights established under

the City's franchise agreement with PG&E do not apply to Port land. Therefore, Port staff is negotiating license agreements with PG&E granting them access to maintain and operate their utility infrastructure while protecting the Port from liability exposure. The agreements are contemplated to have 66-year terms, to be irrevocable, and to be "no-fee" agreements. Once the terms of the agreements have been finalized, Port staff will return to the Port Commission for approval.

#### Mission Rock Utilities:

On September 24, 2019, the Port Commission adopted Resolution No. 19-40, supporting the formation of Mission Rock Utilities, Inc. ("MRU") as a nonprofit entity to build and operate a thermal district energy system and a black water recycling system for the Project. The primary purpose of MRU is the provision of utility services in a manner that meets the Project's goals for environmental sustainability and cost efficiency. MRU will only serve the Project, providing thermal energy to heat and cool buildings and providing recycled water for non-potable uses such as toilet flushing and irrigation.

MRU infrastructure, including sanitary sewer pipes, black water recycling system pipes, and district energy pipes are installed in China Basin Park and in Port open space, which serve the park, open space, and the Project generally. For reference, the Port Commission approved an agreement for the Port to purchase recycled water from MRU for use in the Project's public open space, including China Basin Park (Resolution 22-54), for non-potable uses (e.g. public restroom toilets and irrigation). This agreement establishes rates and increases "caps," establishes liability and insurance provisions, and continues for thirty years at which point the Port will have the option to extend the term.

After the acceptance of China Basin Park and the Non-park open space, MRU will need rights to access and maintain the sanitary sewer pipes and infrastructure for the black water recycling system and district energy system that is installed throughout the project. Like the license agreement with PG&E, the agreement with MRU shall be "no-fee." Once the terms of this agreement have been finalized, Port staff will return to the Port Commission for approval.

## **MISCELLANEOUS OTHER AGREEMENTS**

In addition to the primary agreements described above, Port staff is working to document several other minor agreements that may be needed to document other parties' access rights required for maintenance of certain horizontal improvements post-acceptance. These areas and project elements may include:

- 1. Conduit serving automatic, retractable bollards:** Within the Port-owned paseos, automatic, retractable bollards provide additional security to protect pedestrians. The mechanical bollards require electrical conduit running from the Parcel A and Parcel G buildings through Port public space.
- 2. Bollards in Terry Francois Boulevard:** Three different types of bollards (permanent/fixed bollards, electrical bollards, and manually operated bollards) are installed outside China Basin Park to protect pedestrians on the Bay Trail. These bollards will be owned by the Port but will be maintained by the Park tenant during the term of the

Parks Lease; however, since the bollards are outside of the leased premises, a contingent license agreement to maintain the bollards may be required should the Park lease terminate.

3. **Miscellaneous Conduit:** In anticipation of future security requirements, the Developer installed a conduit that runs under CBP. The conduit is owned by the Port and another entity may require an agreement to allow for its use in the future.
4. **Traffic signal/streetlights:** Two streetlights/poles have been installed at 3<sup>rd</sup> Street and Channel Streets within the property line of the Master Lease and the Port-owned open space/paseos. These traffic signals are not within the City-accepted ROW and therefore, Port staff will negotiate a Memorandum of Understanding or other agreements with SFMTA and PUC to permit access for maintenance of the infrastructure.
5. **Outdoor seating areas.** It is expected that several project tenants will request outdoor seating areas for restaurants or other commercial uses. To accommodate this, Port and Public Works anticipate developing a general outdoor seating area license agreement to streamline approvals from the City for operators.

## NEXT STEPS

Staff will continue working with the Developer and the City Attorney's office to refine the form, scope, and terms of each of the agreements described above. The primary objective of this effort is to 1) allow for the coordinated and cohesive future management of CBP and other Port open spaces and infrastructure by third parties, 2) establish operating standards that allow the Port to manage cost exposure, and 3) limit the Port's liability to the greatest extent possible. Port staff anticipates returning to the Port Commission for approval of each of these agreements once the specific terms and conditions have been determined. To the extent applicable, certain of these agreements may require Board of Supervisors approval as well once they are fully negotiated.

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