



CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED, MAYOR
MEMORANDUM OF UNDERSTANDING

M-16105

BY AND BETWEEN

THE SAN FRANCISCO PORT COMMISSION

and

THE SAN FRANCISCO FIRE DEPARTMENT

Pier 22½

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
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VICTOR MAKRAS, COMMISSIONER
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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the SAN FRANCISCO FIRE DEPARTMENT ("SFFD") and the SAN FRANCISCO PORT COMMISSION ("Port"), both agencies of the City and County of San Francisco ("City").

RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended) and San Francisco Charter of Section B 3.581, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. SFFD and Port entered License No. 501 ("License 501") for use of the Pier 22½ shed as a firehouse building (the "Historic Firehouse") and use of the submerged lands for berthing SFFD's fireboats effective July 1, 1954. SFFD has occupied the property ever since on a month-to-month basis. This MOU will replace License No 501.

C. SFFD is constructing "Fireboat Station 35," a floating first response facility consisting of a steel floating dock with berthing capacity for three fireboats ("Floating Dock") which supports a building with 24/7 accommodations for 10 firefighters and fireboat engineers ("Fireboat Facility Building") as further described and shown in *Exhibit A*. SFFD will install Fireboat Station 35 at Pier 22½ (the "Project"),

D. On December 18, 2018, after the required 30-day public comment period, the San Francisco Planning Department adopted a Mitigated Negative Declaration for the Project (Case No. 2012.0893E) (the "MND") under the California Environmental Quality Act ("CEQA"). Compliance with the Mitigation Monitoring and Reporting Program ("MMRP") in the MND is an enforceable condition of this MOU.

E. Section 3.1 of the Burton Act authorizes the Port to enter into leases for up to 66 years for the construction and operation of all "facilities . . . incidental, necessary or convenient for the promotion and accommodation of commerce and navigation." SFFD's facilities at Pier 22½ including Fireboat Station 35 will service the entire Port waterfront and large portions of the San Francisco Bay and the Project supports the Port's and SFFD's operations as described above. The use contemplated by this MOU is therefore consistent with the public trust.

F. The Port and SFFD now wish to enter into this MOU to set forth the terms and conditions under which SFFD will implement the Project and access, operate, repair, replace, make additions or modification to, and maintain its facilities at Pier 22½ throughout the term of the MOU.

G. On May 28, 2019, by Resolution, the Port Commission adopted the MND and the MMRP, made findings that the Project is consistent with the public trust and approved this MOU. By signing this MOU SFFD adopts the MND and the MMRP and approves this MOU as of the Effective Date (defined below).

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. RECITALS.

The foregoing recitals are true and correct and are incorporated herein by this reference.

2. EFFECTIVE DATE.

The effective date of this MOU is June 1, 2019 (“**Effective Date**”). As of the Effective Date, this MOU will replace License 501.

3. PREMISES.

3.1. The Premises are comprised of:

Parcel A – The Historic Firehouse including approximately 4,872 square feet of building space;

Parcel B - approximately 6,821 square feet of marginal wharf space (existing and to be constructed by SFFD as described in this MOU);

Parcel C - approximately 37,422 square feet of submerged land on which to locate Fireboat Station 35 and the fireboats;

Parcel D – approximately 2,883 square feet of space across The Embarcadero for non-exclusive rent-free use for vehicular ingress and egress (“**North Access**”); and

Parcel E – approximately 884 square feet of space across The Embarcadero for non-exclusive rent-free use for vehicular ingress and egress (“**South Access**”),

collectively, the “**Premises**” located at Pier 22½, in the City and County of San Francisco, as shown in *Exhibit B*, including without limitation, all surface and subsurface areas and all improvements thereto, including all above-ground structures and Substructure .

3.2. *Unique Nature of Premises*. SFFD acknowledges that: (a) the Premises is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (d) there is a risk that sea level rise will increase the cost of Substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and (e) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this MOU.

3.3. *As is Condition*. The SFFD acknowledges that it has had possession and use of the Firehouse and other portions of the Premises since July 1954, has inspected the entire Premises and accepts the Premises in its “As Is” condition without any preparation, improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy and possession of the Premises. SFFD has received and reviewed the disclosures regarding the Northern Waterfront Seawall which stretches from Fisherman’s Wharf to Mission Creek (“**Seawall**”) including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information on the Port’s website; the FEMA disclosure notice attached as *Schedule 1* and a copy of the report(s) relating to the Substructure and/or superstructure of the Premises, as further described in *Schedule 2* attached hereto.

SFFD has investigated and inspected the condition of the Premises and its suitability for SFFD's intended use including (i) its quality, nature, adequacy and physical condition including the structural elements, foundation, and the condition and load-bearing capacity of the piles, and all other physical and functional aspects; (ii) its quality, nature, adequacy, and physical, geotechnical and environmental conditions (including Hazardous Materials conditions, including the presence of asbestos or lead, with regard to the buildings, soils, sediments and any groundwater); (iii) its suitability for the Project; (iv) its zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the Site; and (v) all other

matters of material significance affecting the Premises and its use and development under this MOU.

4. TERM AND TERMINATION.

4.1. The Term of this MOU (“**Term**”) shall commence on the Effective Date, and shall continue for a period of fifty (50) years thereafter (“**Expiration Date**”). This MOU may be terminated by SFFD or by the Port upon 30 days prior written notice to the other party, for any reason.

Any holding over with the Port’s consent after the Expiration Date shall be on a month-to-month basis and upon each and every one of the terms and conditions of this MOU except that monthly rent shall be the greater of: (i) the actual monthly rent immediately prior to the Expiration Date increased by three percent (3%) or (ii) the then current parameter rent approved by the Port Commission. In either case, Rent will increase by three percent (3%) annually on each anniversary of the Effective Date (“**Anniversary Date**”) during any hold over period.

SFFD shall hold Port harmless from and against any and all loss or liability resulting from SFFD's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant or developer founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant or developer, together with, in each case, actual attorneys' fees and costs.

The "Term" shall refer to the total time period during which this MOU is in effect, including any hold over period.

4.2. At any time after the Rent Commencement Date, SFFD may relinquish, without cost or liability to SFFD: (i) all or a portion of the Historic Firehouse (Parcel A), and/or (ii) a portion of the marginal wharf (Parcel B) located north of the Historic Firehouse, upon 180 days’ prior written notice to Port; provided the parties agree that SFFD’s operations can continue without the relinquished space and the Port can put the relinquished space into productive use for another purpose in order to support and/or generate revenues to the trust. Port’s new uses must include the ability to access all areas necessary to perform any needed repairs and/or renovations associated with the new use. Regardless of any contraction of the Premises, SFFD’s operations and use of the Premises must at all times be in compliance with all Regulatory Approvals as originally envisioned or as amended at SFFD’s cost. The Port agrees to use its best efforts to ensure that regardless of any other use of portions of the Historic Firehouse, the traditional Historic Firehouse decorations can continue.

5. RENTAL PAYMENTS; RENT CREDITS FOR TENANT IMPROVEMENTS.

5.1. SFFD will commence payment of rent (“**Rent**”) upon issuance of the Certificate of Occupancy (or equivalent Port sign-off) or the Port equivalent for the Fireboat Facility Building (“**Rent Commencement Date**”). SFFD will pay Rent in the following amounts on the first day of each calendar month during the Term (the “**Due Date**”):

<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel A - Firehouse	1-12	4,872	\$1.60	\$7,795.20
Parcel B – Marginal Wharf		6,821	\$0.40	\$2,728.40
Parcel C - Submerged Lands		37,422	\$0.09	\$3,367.98
Total				\$13,891.58
Parcel A	13-24			\$8,029.06
Parcel B				\$2,810.25
Parcel C				\$3,469.02

Total				\$14,308.33
Parcel A	25-36			\$8,269.93
Parcel B				\$2,894.56
Parcel C				\$3,573.09
Total				\$14,737.58
Parcel A	37-48			\$8,518.03
Parcel B				\$2,981.40
Parcel C				\$3,680.28
Total				\$15,179.71
Parcel A	49-60			\$8,773.57
Parcel B				\$3,070.84
Parcel C				\$3,790.69
Total				\$15,635.10
Parcel A	61-72			\$9,036.78
Parcel B				\$3,162.96
Parcel C				\$3,904.41
Total				\$16,104.15
Parcel A	73-84			\$9,307.88
Parcel B				\$3,257.85
Parcel C				\$4,021.54
Total				\$16,587.27
Parcel A	85-96			\$9,587.12
Parcel B				\$3,355.59
Parcel C				\$4,142.19
Total				\$17,084.90
Parcel A	97-108			\$9,874.73
Parcel B				\$3,456.26
Parcel C				\$4,266.46
Total				\$17,597.45
Parcel A	109-120			\$10,170.97
Parcel B				\$3,559.94
Parcel C				\$4,394.45
Total				\$18,125.36

Commencing on the tenth (10th) Anniversary Date of the MOU and repeating each 10-year anniversary (20th, 30th, and 40th) thereafter, the Rent shall be adjusted to Fair Market Value (“FMV”) by increasing the Rent to the greater of: (i) the Rent charged for the previous month increased by three percent (3%), or (ii) the- then current parameter rents approved by the Port Commission for the following categories: for the Historic Firehouse (Parcel A) – Parameter Shed Rate for Piers in the immediate vicinity such as Piers 26 and 28, for the marginal wharf (Parcel B) - Parameter Apron and Open Pier Space Rate, and for Submerged Land (Parcel C) – 50% of Parameter Submerged Land Rate. For all other years not affected by a FMV adjustment, the Rent shall be increased by three percent (3%) per year on each Anniversary Date of this MOU.

If SFFD fails to pay or cause to be paid, Rent or any portion of Rent within ten (10) days following the Due Date, such unpaid amount shall be subject to a late payment charge (the "**Late Charge**") equal to one and one-half percent (1.5%) of all undisputed amounts which remain unpaid as of the Due Date notwithstanding the 10 day grace period. Such Late Charge may be assessed without notice and cure periods.

5.2. Notwithstanding anything in the Pier 26 MOU (MOU No. M-16112), beginning on the Rent Commencement Date, SFFD shall be entitled to the following rent credits:

(a) up to \$1.6 million for the tenant improvements described in the Pier 26 MOU which will be unapplied assuming the Pier 26 MOU expires on the anticipated expiration date of September 30, 2021; and

(b) the actual documented cost for tenant improvements to the existing marginal wharf (Parcel B) and substructure as part of the Project for a dedicated public access area as further described in Section 10.2(c) and (d) to be applied against monthly Rent in an amount equal to 100% of monthly Rent until such credits are exhausted (estimated to be \$800, 000).

5.3. On the first (1st) Anniversary Date , and every year thereafter, SFFD shall provide to the Port a report of authorized capital expenditures and an accounting of the total rent credit applied over the previous year and any additional supporting documentation requested by Port. At Port's request, SFFD shall provide copies of unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of the tenant improvements covered by the rent credit request. In no event shall maintenance, repair and/or replacement costs of the tenant improvements be eligible for rent credits. One year before the credits are exhausted, the Port and SFFD shall meet to discuss the credits.

5.4. Any unapplied or unused portion of the rent credit at the end of the Term (including all holdover periods), shall, remain the property of the Port, and SFFD shall have no interest in said funds. Other than as set forth in this Section, Port shall have no obligation to provide, and SFFD shall not be entitled to, a rent credit, tenant improvement allowance or any other form of reimbursement or credit in connection with the tenant improvements. For clarity, if SFFD continues to use Pier 26 after September 30, 2021 (the anticipated expiration date of the Pier 26 MOU), SFFD rent will apply under Section 6(b) of the Pier 26 MOU. At any time after the anticipated expiration date SFFD may relinquish, without cost or liability to SFFD, use of Pier 26. Upon expiration or relinquishment the parties agree to use best efforts to work together to identify a sheltered berthing location for temporary vessel berthing during rough weather or an emergency.

5.5. Notwithstanding anything in Section 5.4 above, SFFD may apply for additional future rent credits for capital improvements made to the Premises that qualify under this Section 5.5. Capital improvements that could qualify for rent credits include: (i) work which would generally be considered a Port responsibility which could be more expeditiously or economically handled by SFFD; (ii) work that extends the useful life of the Premises and survives the tenancy, and (iii) work which directly supports the Port's Trust mission such as improvements for public access. Requests for future rent credits will be reviewed on a case by case basis and must be approved by the Port's Executive Director and/or the Port Commission.

5.6. Port and SFFD agree to jointly endeavor to seek out and explore alternative supplemental funding sources such as grants that may be used to help augment the funding of various desired and necessary capital improvements.

6. FINANCIAL ASSURANCES.

Per the Port Commission Resolution approving this MOU, no security deposit is required for the SFFD occupancy of the Premises for the Term and use described in this MOU ("**Security Deposit**").

7. PERMITTED USES.

SFFD may use the Premises for the following "**Permitted Uses**" and no others:

7.1. Ongoing operation of a firehouse and fireboat berthing facility for one fire engine, three fireboats and various small service and rescue vessels, sleeping quarters for firefighters, storage of ancillary emergency equipment in support of the fireboats and for other miscellaneous functions normally associated with a firehouse; and

7.2. Implementation of the Project; and

7.3. SFFD acknowledges that there are current and future tenants, licensees and other third parties with rights to use Port property in the immediate vicinity of the Premises, and agrees to work cooperatively with them and the Port during the Term.

7.4. All Permitted Uses shall comply with the attached MMRP (*Exhibit C*) and the attached Port-approved Operations Plan (“**Operations Plan**”) submitted by SFFD and attached hereto as *Exhibit D*. Non-compliance with the Operations Plan is a material breach of the MOU.

8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW; PERMITS.

SFFD shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the Permitted Uses. SFFD shall not perform any act which will cause a cancellation of any insurance policy covering the Premises or any part thereof.

SFFD shall not interfere with any existing Port structures or any operations of Port tenants or licensees, or access of Port tenants or licensees to their leased premises or licensed areas, as applicable, except as reasonably necessary for the Project. SFFD, at SFFD’s cost and expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments (“**Laws**”) pertaining to SFFD’s use and occupation of the Premises in effect either at the time of execution of the MOU or at any time during the Term. SFFD’s obligations under this Section include compliance with the Americans with Disabilities Act. If SFFD’s use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any Port property outside of the Premises to comply with the ADA, then, SFFD will perform such work at its sole cost and expense.

SFFD understands that SFFD’s operations on the Premises, changes in use, and/or Improvements or Alterations to the Premises will require authorizations, approvals, licenses, registrations, or permits (each a “**Regulatory Approval**”) required or issued by a regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including BCDC, any environmental regulatory agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port’s Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property)(each a “**Regulatory Agency**”) including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

SFFD shall be solely responsible for obtaining any Regulatory Approvals, and SFFD shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by SFFD. SFFD shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, SFFD shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port’s interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port’s sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of SFFD to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by SFFD, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, SFFD agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of SFFD’s failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of this Section, SFFD agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this MOU in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers, and (iv) SFFD is solely responsible for obtaining any and all required Regulatory Approvals. Accordingly, SFFD understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of SFFD to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Premises. SFFD hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

Unless the Port agrees to assume any of the obligations of the permittees under *BCDC Permit No. 2018.002.00 for the San Francisco Fireboat Station 35 Project*, SFFD is responsible for ensuring compliance with all BCDC permit obligations including but not limited to all standard and special conditions placed on the permittees including on SF Public Works.

9. MAINTENANCE, REPAIR AND UTILITIES.

SFFD will be strictly responsible, at its sole cost, for the security of the Premises and for maintenance and repair of the Premises during the Term of this MOU. Such maintenance is more fully described below. SFFD acknowledges that the Port has no security, maintenance or repair obligations for the Premises during the Term of this MOU.

9.1. Utilities. SFFD shall, at its sole cost and expense, repair and maintain in good operating condition all utilities located within the Premises and all utilities installed by SFFD that serve the Premises (whether within or outside the Premises) and shall pay, or cause to be paid for, all utility services provided to the Premises. SFFD shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by SFFD's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom. The parties agree that any and all utility improvements to the Firehouse shall become part of the realty and are not trade fixtures. Electricity must be procured from the SFPUC unless the SFPUC determines that it cannot feasibly provide service.

9.2. Historic Firehouse. SFFD shall, at its sole cost and expense, maintain and repair the super-structural elements, such as the exterior and interior walls, roof, doors and windows of the Historic Firehouse. SFFD shall maintain all plumbing, mechanical, fire protection, gas and electrical equipment and fixtures. If SFFD relinquishes a portion of the Historic Firehouse as provided under Section 4.2, SFFD's obligations under this Section shall be to pay, on a prorated per square foot basis, the cost of maintenance and repair.

9.3. Access Areas. SFFD shall, at its sole cost and expense, maintain and repair those portions of driveway and sidewalk (including Substructure where applicable) included in the North and South Access areas.

9.4. Waterside Improvements. SFFD shall, at its sole cost and expense repair and maintain all marine improvements including but not limited to: Fireboat Station 35, vehicle and pedestrian access ramps, utility racks, guide and fender piles, and all other marine improvements related to Fireboat Station 35.

9.5. Substructure. SFFD shall, at its sole cost and expense, repair and maintain all sub-structural elements (both existing and those improvements made by SFFD) of the pier and marginal wharf; including but not limited to piles, girders, beams and concrete slab located within the Premises, including the Substructure under the Firehouse. For purposes of this MOU, "**Substructure**" means that portion of the pier that includes all the load bearing structural elements that are at or below the top surface of the pier deck but excluding the Seawall. The load bearing

structural elements of the Substructure include but are not limited to slab/deck, beams and piles. If SFFD relinquishes a portion of the Historic Firehouse and/or the marginal wharf as provided under Section 4.2, SFFD's obligations under this Section shall be to pay, on a prorated per square foot basis, the cost of maintenance and repair.

9.6. Seawall. Neither Port nor SFFD shall have any obligation to maintain or repair the Seawall. The location of the Seawall is shown on the attached *Exhibit E*.

9.7. Graffiti Removal. SFFD agrees to remove all graffiti from the Premises, including from the exterior of the Historic Firehouse, promptly upon SFFD's discovery of the graffiti.

9.8. Capital Needs Assessment Report for the Historic Firehouse. Every five (5) years beginning on the fifth anniversary date of the Effective Date of this MOU, SFFD shall deliver to Port a Capital Needs Assessment report ("CNA") for the Firehouse. The CNA must be in a form acceptable to Port, and must, at a minimum, contain the following information and comply with the following standards

- (a) basic property information, including at a minimum parcel size, square footages and building area;
- (b) a narrative description of the Premises and its Improvements, including the building type, construction materials, major systems and interior/exterior finishes;
- (c) a description of the current conditions, expected useful lives of all building elements/systems/finishes including of the foundation, structure and substructure, and all utilities systems serving the Improvements, an estimate of the remaining useful life of existing systems and recommendations for further investigation by engineers or construction specialists, if necessary;
- (d) relevant photographs of various areas of the Improvements that show building elements and systems and current conditions that require repair, replacement, upgrade or improved maintenance;
- (e) a list of the immediate physical needs and estimated cost to address them, as well as a 20-year replacement reserve analysis, each provided in unprotected, Microsoft Excel financial spreadsheet documents; and
- (f) an explanation of cost estimating methodologies and assumptions of construction cost inflation.

If Port reasonably believes the CNA does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then Port shall notify SFFD of such deficiency and SFFD shall revise the CNA to address Port's concerns within the timeframe specified by Port. If SFFD fails to provide the required CNA or a revised CNA to Port within the timeframe specified by Port, Port after giving thirty (30) days' notice to SFFD shall have the right, but not the obligation, to cause the preparation of a CNA by a team of construction professionals of Port's choice, at SFFD's sole cost. SFFD shall perform the repairs or improvements recommended in the CNA within the timeframe set forth in the CNA or as agreed by Port in its sole discretion.

In addition to the preparation and delivery of CNA to Port in accordance with this Section, if any CNA or similar facilities condition report is prepared by or on behalf of SFFD for any other reason or purpose, SFFD will promptly provide Port with a copy of such report.

9.9. If SFFD requests Port to perform maintenance or repair which are SFFD's obligation under this MOU, whether emergency or routine, Port may, in its sole discretion, elect to do so, and Port shall charge SFFD for the cost of the work performed at the then prevailing standard rates, and SFFD agrees to pay said charges to Port promptly upon billing.

10. IMPROVEMENTS AND ALTERATIONS.

10.1. SFFD shall not make any alterations, installations, improvements, or additions to the Premises (“**Improvements**”): (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Improvements which affect the structural portions of the Premises, the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Firehouse, and (ii) until SFFD has procured and paid for any necessary Regulatory Approval. As further described below in Section 11.2, the parties agree that Port has provided its consent to the Project under (i) above.

Throughout the permit process for any Regulatory Approval, SFFD shall consult and coordinate with Port, and Port shall cooperate reasonably with SFFD in its efforts to obtain such Regulatory Approval, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses. SFFD shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than Port, if Port is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Port whether on or off the Premises, unless in each instance Port has previously approved such conditions in writing in Port's sole and absolute discretion. Port shall join, where required, in any application by SFFD for a BCDC or other required Regulatory Approval, and in executing such permit, provided that Port shall have no obligation to join in any such application or execute the permit if the Port does not approve the conditions imposed by BCDC or other regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by SFFD. SFFD shall be responsible for complying, at no cost to Port, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. Any fines or penalties imposed as a result of the failure of SFFD's to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by SFFD, and Port shall have no liability, monetary or otherwise, for any fines and penalties.

SFFD shall not install any equipment on the roof of the Historic Firehouse without Port's prior written consent which may be granted or denied in Port's sole discretion.

10.2. Subject to all Regulatory Approvals, SFFD shall make and maintain the following Improvements as part of the Project (which, with Port's consent may be modified in a manner substantially and functionally similar to the following).

(a) Demolition of the existing portions of Pier 22½ north and south finger piers including removal of approximately 3,500 square feet of north and 1,750 square feet of south pier decks and extraction of 75 one-foot-diameter wood piles that support the finger piers, removal of existing sanitary sewer, water and electrical utility lines, perimeter fences, and associated appurtenances.

(b) Demolition of the approximately 2,200 square foot shed located on the north finger pier including perimeter fences, and associated appurtenances.

(c) Demolition of approximately 3,900 square feet of pier and marginal wharf south of the existing Firehouse.

(d) Construction of a new marginal wharf area including installation of four 48-inch-diameter piles and two 24-inch-diameter piles, girders, beams, concrete slab and placement of new sidewalk elements.

(e) Landside excavation on The Embarcadero for the installation of new electrical vaults, switchboards and panels, sewer, new backflow devices and water and natural gas meters including; all piping, wiring, conduit and hardware necessary for such installation.

(f) Excavation, removal and replacement of the existing Pier 22½ driveway and sidewalk paving.

(g) Installation of four 60-inch-diameter guide piles to which Fireboat Station 35 will be secured.

(h) Installation of Fireboat Station 35 - an approximately 173-foot-long, 96-foot-wide steel Floating Dock which supports a 16,000 square foot warm shell (the Fireboat Facility Building).

(i) Installation of an approximately 92-foot-long, 17-foot-wide steel frame access ramp including a vehicle access gate at the landside end of the marginal wharf and a utility rack hung beneath the access ramp which will carry necessary mechanical, electrical and plumbing infrastructure, including AWSS hoses from The Embarcadero and marginal wharf to the Fireboat Station 35.

(j) Installation of a separate aluminum gangway between the Fireboat Station 35 and the eastern edge of Pier 22½ to provide additional pedestrian access to the Fireboat Station 35 for firefighters.

(k) Temporary and permanent power installation for the construction and operation phases for Fireboat Station 35.

(l) Construction of new fences, gates, guard rails, lamp posts and associated appurtenances related to the facilities.

(m) Other work incidental and associated with the Project.

(n) Staging and storage of equipment and materials, provided it is on or within the Premises, to support construction activities, including but not limited to: storage of plumbing pipe and fixtures, electrical fixtures, wire, conduit, drywall, lumber, paint, flooring and other materials needed for construction (additional laydown space will be addressed separately if needed);

(o) After construction, activities necessary to operate, maintain, and complete routine repairs or rehabilitation work at the Premises, including alterations or improvements to the Premises from time to time.

(p) Installation and maintenance of exterior improvements, landscape material and architectural features to match those specified with the Civic Design Review process. SFFD may maintain any installation of artwork in coordination with the San Francisco Arts Commission.

10.3. Construction Requirements. All Improvements to the Premises made by or on behalf of SFFD, including the Project shall be subject to the following conditions, which SFFD covenants faithfully to perform:

All Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

All Improvements shall be performed at the sole cost and expense of SFFD, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

SFFD shall undertake reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and the surrounding property, or the risk of injury to members of the public, caused by or resulting from

the performance of its work. Dust, noise and other effects of the construction work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. SFFD shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

SFFD shall provide adequate advance notice to the Port of the schedule of construction work, work with any Port tenants, licensees or other nearby users to notify them of the schedule and accommodate their operations in a reasonable manner, and provide the Port with the opportunity to recommend reasonable modifications to the schedule or sequence of operations, in order to preserve Port operations and minimize disruptions thereto, including without limitation, traffic flow across Port property.

SFFD shall, without expense to the Port, repair any damage to any real or personal property under Port jurisdiction caused by SFFD Parties.

SFFD shall require each contractor it hires to perform construction work on the Premises to secure insurance coverage with limits as approved by the City's Risk Manager, to include public liability insurance in an amount not less than Five Million Dollars (\$5,000,000) Combined Single Limit, including auto and contractual, with endorsements naming the San Francisco Port Commission and its officers, directors, employees and agents, an all authorized agents and representatives, and members directors, officers, trustees, agents and employees of any of them.

At the completion of any other work described in this Section, SFFD shall furnish to Port one reproducible "as built" drawing of all Improvements made to the Premises. If SFFD fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to SFFD shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at SFFD's sole cost, to be paid by SFFD to Port within thirty (30) days after Port's request therefor.

10.4. Historic Firehouse. SFFD expressly acknowledges that the Historic Firehouse is a designated city landmark site. In 1999 the Board of Supervisors designated the 1915 Renaissance Revival structure City Landmark Site No. 225 for its architectural and historic significance. The historic Fireboat House was built by the Board of State Harbor Commissioners for the use of the San Francisco Fire Department and has been in continuous Fire Department use since 1915. Article 10, Section 1006 of the City Planning Code requires the approval of a Certificate of Appropriateness by the San Francisco Historic Preservation Commission for the alteration of designated landmark sites.

In recognition of its historical significance as an important part of the Board of State Harbor Commissioners planning, development and beautification of the waterfront, the historic Fireboat House was also designated by the National Park Service a contributing resource, along with 50 other structures including piers, buildings and 21 sections of bulkhead wharf and seawall, within the Port of San Francisco Embarcadero Historic District on the National Register of Historic Places in 2006. Accordingly, all interior and exterior Improvements (including but not limited to, any repair, alteration, or construction to the interior or exterior of the Historic Firehouse) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "**Secretary's Standards**") and summarized in the attached **Schedule 3**, and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as **Schedule 4** ("**Port's Guidelines**"). SFFD agrees to comply with all such requirements and guidelines.

10.5. Asbestos. In the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, SFFD shall ensure that all Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, SFFD shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance. For clarity, this Section only applies in connection with disturbance, improvements or alterations caused or made by SFFD.

10.6. Lead-Based Paint. SFFD shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). SFFD shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, SFFD when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 0, lead-based paint is "**disturbed or removed**" if the work of Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. For clarity, this Section only applies in connection with disturbance, improvements or alterations caused or made by SFFD.

10.7. Improvements Part of Realty. Except for the Fireboat Station 35 and all appurtenances thereto, all Improvements constructed on or affixed to the Premises by SFFD shall immediately upon construction or installation become part of the realty owned by Port and shall, unless otherwise specified by Port in writing prior to the expiration or earlier termination of this MOU, remain on the Premises at the end of the Term without compensation to SFFD.

10.8. Port's Alterations. Port reserves the right for itself and any other Port tenant to make, additions, repairs, deletions or improvements to adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to SFFD; Port will have no obligation to minimize inconvenience or disturbance to SFFD for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work entitle SFFD to any abatement or diminution of Rent, or otherwise relieve SFFD from any of its obligations under this MOU.

10.9. Dredging. SFFD shall be solely responsible for any dredging and dredging-related activities required in connection with its operations, including areas outside of the Premises necessary to provide access to the Premises (the "**Dredging Work**"), and for all costs associated with the Dredging Work, including hydrographic surveys, pre-dredge testing, sampling, chemical analyses, bioassays permitting, and all consultant and dredging contracting.

SFFD shall also promptly provide at no cost to Port copies of all pre-dredge and post-dredge surveys, submittals to Regulatory Agencies, soundings, reports, data, and any other information obtained in connection with the Dredging Work. SFFD shall be responsible for testing, sampling, removing, and disposing of the sediment, debris, and other materials dredged from the Bay all in accordance with this MOU. Dredging Work shall be performed in accordance with the requirements of the permit issued to SFFD by the DMMO.

11. HANDLING HAZARDOUS MATERIALS/ENVIRONMENTAL LAWS.

11.1. *Requirements for Handling.* Neither SFFD nor its agents or invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises or any other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

11.2. *SFFD Responsibility.* SFFD agrees to protect its agents and invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its agents and invitees, that during its use and occupancy of the Premises, each of them:

(a) SFFD will not permit any Hazardous Materials to be present in, on, under or about the Premises, or other Port property except as permitted under Section 11.1 (Requirements for Handling);

(b) SFFD will not cause or permit any Hazardous Material Condition; and

(c) SFFD will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises or any other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

11.3. *SFFD's Environmental Condition Notice Requirements.*

(a) SFFD must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when SFFD learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 11.1 (Requirements for Handling), Handled, in, on, or about the Premises, any other Port property, or the environment, or from any vehicles or vessels that SFFD, its Agents or Invitees use during SFFD's use of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) SFFD must notify the Port immediately, orally or by other means that will transmit the earliest possible notice to the Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide the Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, any other the Port property, or the environment, or from any vehicles or vessels SFFD or its agents or invitees uses during SFFD's use of the Premises that SFFD or its agents or invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that SFFD or its agents or invitees receives from any Environmental Regulatory Agency relating to the Premises and Handling of Hazardous Materials;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against SFFD or its agents or invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the

Premises, other Port property, or the environment, or from any vehicles or vessels SFFD or its agents or invitees use during SFFD's use of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against SFFD or its agents or invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels that SFFD or its agents or invitees use during SFFD's use of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by SFFD or its agents or invitees for operations at the Premises.

(c) SFFD must notify Port of any meeting, whether conducted face-to-face or telephonically, between SFFD and any Environmental Regulatory Agency regarding an Environmental Regulatory Action related to the Premises and Handling of Hazardous Materials. Port will be entitled to participate in any such meetings at its sole election.

(d) SFFD must notify the Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval related to the Premises. SFFD's notice to the Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, SFFD must provide the Port with a list of any Environmental Regulatory Approval, plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." SFFD must provide the Port with copies of any of the documents within the scope of this Section upon Port's request.

(e) SFFD must provide the Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from SFFD's or its agents' or invitees' operations at the Premises. Upon the Port's request, SFFD must provide the Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(i) The Port may from time to time request, and SFFD will be obligated to provide, information reasonably adequate for the Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

11.4. Requirement to Remediate.

(a) SFFD's Remediation obligations under this Subsection (a) are subject to Subsection (b).

(i) After notifying the Port in accordance with Section 11.3 (SFFD's Environmental Condition Notice Requirements), SFFD must Remediate at its sole cost in compliance with all Environmental Laws and this MOU, any Hazardous Material Condition occurring during the Term or while SFFD or its Agents or Invitees otherwise use any part of the Premises. SFFD must obtain the Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, according to the approved Remediation work plan.

(ii) In addition to its obligations under clause (i), before this MOU terminates for any reason, SFFD must Remediate at its sole cost in compliance with all Environmental Laws and this MOU: (A) any Hazardous Material Condition caused by SFFD's or its agents' or invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during SFFD's use that is required to be Remediated by any

Regulatory Agency if Remediation would not have been required but for SFFD's use of the Premises.

(iii) If Environmental Laws require a Remediation action plan, SFFD must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, SFFD must take all actions that are reasonably necessary to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly, or indirectly to Hazardous Materials.

(b) Unless SFFD or its agents or invitees Exacerbate the Hazardous Material Condition, SFFD will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by Port, or its agents during SFFD's use of the Premises; or (ii) arising before the Effective Date or the date of SFFD's first use of the Premises, whichever is earlier.

11.5. *The Port's Right to Audit.* The Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 24 (Port's Entry on Premises). The Port's failure to inspect or obtain samples or to detect conditions attributable to SFFD's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be SFFD's responsibility under this MOU.

11.6. *Storm Water Pollution Prevention.*

(a) SFFD must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. SFFD's SWPPP and a copy of a Notice of Intent for SFFD's Premises must be submitted to the Port's Real Estate and Development Division before beginning operations in the Premises.

(b) In addition to requiring compliance with the permit requirements under subsection (a), SFFD shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

(c) On February 15, 2019, the San Francisco Water Quality Control Board (Water Board) issued a *Water Quality Certification for the Fire Station 35 at Pier 22 ½ Project in the City of San Francisco, San Francisco County*. This certification stated, "The Applicant shall implement the Pier 22½ - Fire Boat 35 Final Storm Water Control Plan (SCP), dated January 8, 2019, consisting of media filters as best management practices (BMPs). The Applicant shall develop and implement, by January 31, 2020, a green infrastructure project to treat an additional 8,300 sq. ft. of impervious surface at an offsite location." The parties agree that SFFD shall be fully responsible for the implementation of this requirement, including site identification, design, construction, and ongoing maintenance, and for all costs involved. Port will make a good faith effort to identify a suitable location on Port property for SFFD to use to satisfy this requirement and will consult with SFFD on design, construction, and ongoing maintenance, all at SFFD's cost. If Port cannot find a suitable location on Port property, SFFD will be responsible for finding a location for the mitigation project.

11.7. *Presence of Hazardous Materials.* California Law requires landlords to disclose to SFFD the presence or potential presence of certain Hazardous Materials. Accordingly, SFFD

is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the Hazardous Materials described in the reports listed in *Schedule 5* attached hereto, copies of which have been delivered to or made available to SFFD are known to be present at or near the Premises. By execution of this MOU, SFFD acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. SFFD also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

11.8. Survival. SFFD's obligations under this Section shall survive the expiration or earlier termination of this MOU.

11.9. Definitions.

For purposes of this MOU, the following terms have the following meanings:

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Premises.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or **"Exacerbating"** when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of SFFD's operations, Investigations, maintenance, repair, Improvements and Alterations under this MOU. "Exacerbation" has a correlating meaning.

"Handle" or **"Handling"** means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous

waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of SFFD, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, or the environment, or from any vehicles or vessels SFFD, or its agents and invitees uses during SFFD's use of the Premises.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, other Port property, or the environment.

"Remediate" or **"Remediation"** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. **"Remediation"** also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

12. PREMISES CONDITION AND REPAIR.

Nothing contained herein shall require Port or SFFD to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature. In the event that at any time during the Term of this MOU, Port in its sole discretion, determines that, due to casualty, wear and tear, deferred maintenance, flooding, sea level rise or any other foreseen or unforeseen circumstances, which are not the result of SFFD's failure to comply with its obligations under this MOU the condition of the Premises and/or the pier structure or substructure structures or substructure affecting any areas adjacent to the Premises, all or any portion of the Premises cannot be safely used for the uses permitted under this MOU, the Premises shall be redefined to exclude the area which, in Port's sole opinion, needs to be removed from the Premises in order to safely use the remaining portion of the Premises for the uses permitted by this MOU. The Rent shall be reduced by a fraction, the numerator of which shall be the total square footage removed and the denominator of which shall be the total floor area of the entire Premises.

If in SFFD's sole judgment, the removal of a portion of the Premises under this Section renders the Premises unusable to SFFD for the uses permitted by this MOU, SFFD may terminate this MOU upon sixty (60) days prior written notice to Port. In the event of such termination, neither party shall be deemed at fault and Port shall have no further obligations to SFFD, including without limitation, any obligation to reimburse SFFD any costs related to any Improvements SFFD may have made to the Premises or to relocate SFFD to another location on Port property or elsewhere.

In no event shall the Port be liable to SFFD or any other party for any loss of business or and any other costs of losses of any kind or nature whatsoever incurred by SFFD or any other party pursuant to this Section or any termination of this MOU resulting therefrom.

In no event shall the Port be liable to SFFD or any other party for any loss of business or and any other costs or losses of any kind or nature whatsoever incurred by SFFD or any other party as a result of Port's termination of this MOU under this Section.]

12.1. This Section shall not apply in the event that SFFD is responsible for the conditions resulting in Port's determination that the use of the Premises must be limited or terminated.

13. PORT'S ENTRY ON PREMISES.

13.1. *Entry for Inspection.* Port shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that SFFD is present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises are in good condition and whether SFFD is complying with its obligations under this MOU.

13.2. *General Entry.* Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice to conduct any necessary maintenance, repairs or restoration or to perform any activities which Port has the right or obligation to perform to the Premises or areas adjacent to the Premises in its capacity as a landlord; and to do any other act or thing necessary for the safety or preservation of the Premises or areas adjacent to the Premises

13.3. *Emergency Entry.* Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of SFFD from the Premises or any portion of them.

13.4. *No Liability.* Port shall not be liable in any manner, and SFFD hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 13 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

13.5. *Non-Disturbance.* Port shall use its commercially reasonable efforts to conduct its activities on the Premises in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to SFFD.

13.6. *Entry During Final Six Months of the Term.* Provided SFFD has issued formal written notice to the Port stating SFFD's intent to vacate the Premises at the end of the Term or during the last 180 days of the Term, as the case may be, the Port may enter the Premises to show the Premises to prospective purchasers, real estate brokers and agents, and persons interested in an exchange and to post any "for sale" or "for lease" signs in connection therewith. Any entry by the Port shall comply with the provision of this Section 24.

14. SEAWALL.

Port is undertaking the Seawall Resiliency Project. SFFD shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty or liability on the Port to for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for inconvenience, loss of business or other damage to SFFD by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of SFFD.

15. INSURANCE. SFFD is self-insured through the City's self-insurance program. Any coverage for use by third parties shall require approval by the City's Risk Manager.

16. DEFAULT; REMEDIES.

Failure of SFFD to perform any provision of this MOU, if the failure to perform is not cured within thirty (30) business days after a written notice has been given by the Port to SFFD, shall constitute a default by SFFD. If the default cannot be reasonably cured within thirty (30) business days, SFFD shall not be in default of this MOU if it commences to cure the failure within such 30-day period and diligently and in good faith continues to cure the failure. For SFFD to cure a default, the Port and SFFD shall avail themselves of the dispute resolution procedures in Section 25, but if that process is not successful, the Port may terminate this MOU in accordance with this Section.

17. ASSIGNMENT AND SUBLETTING . Assignment or subletting is strictly prohibited under this MOU.

18. DAMAGES.

It is the understanding of the parties that Port shall not expend any funds due to or in connection with SFFD's use of the Premises, including without limitation SFFD's Improvements, except as otherwise specifically set forth in this MOU. Therefore, SFFD agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise from the time of SFFD's first use of any portion of the Premises (i) as a result of the handling of Hazardous Materials on or about the Premises by SFFD, its agents or invitees, and its contactors and their subcontractors, agents and invitees; (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises or which arise as a result of SFFD's or its agents' or invitees' act or omission; or (iii) out of SFFD's failure to comply with the terms of License 501 or this MOU, including, without limitation, compliance with all Laws and Regulatory Approvals. The foregoing obligation of SFFD shall survive the expiration or termination of this MOU. In addition, SFFD will ensure that Port is indemnified to the same extent that SFFD is indemnified by its vendors, contractors or agents conducting any activities on the Premises.

19. NOTICES.

All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and SFFD as shall from time to time be designated by the parties for the receipt of notice, or when deposited in the United States mail, postage prepaid, and addressed, to:

Address for the Port: Director of Real Estate and Development
Port of San Francisco
Pier One
San Francisco, CA 94111
Telephone No: (415) 274-0544
Email: michael.martin@sfport.com

And to: Port Chief Harbor Engineer
Port of San Francisco
Pier One
San Francisco, CA 94111
Telephone No: (415) 274-0570
Email: rod.iwashita@sfport.com

Address for SFFD: Chief of Fire Department

San Francisco Fire Department
698 Second Street, Second Floor
San Francisco, CA 94107

Telephone No:

(415) 558-3401

Email:

[REDACTED]

20. SUCCESSORS AND ASSIGNS.

The covenants and conditions contained herein shall inure and bind the heirs, successors, executors and assigns of the Port and SFFD.

21. SEVERABILITY. The invalidity or unenforceability of a particular provision of this MOU shall not affect the other provisions hereof.

22. PROXIMITY OF DEVELOPMENT PROJECT.

In addition to the Seawall Resiliency Project, SFFD acknowledges that during the Term, the Port expects the Pier 22½ vicinity to be included in a development project. SFFD is aware that the construction of such project(s) and the activities associated with them will generate certain adverse impacts which may result in some inconvenience to or disturbance of SFFD. Said impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. SFFD acknowledges and agrees that it shall not be entitled to any rent abatement due to these impacts.

23. SIGNS.

SFFD shall not have the right to place, construct or maintain any sign, decoration, video display, advertisement, awning, banner or other exterior decoration or notices on the Premises without the Port's prior written consent. Any sign that SFFD is permitted to place, construct or maintain on the Premises shall comply with all laws relating thereto, including but not limited to Port's Tenant Sign Guidelines, and SFFD shall obtain all Regulatory Approvals required by such laws. The Port makes no representation with respect to SFFD's ability to obtain such regulatory approval. SFFD, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this MOU.

24. COOPERATION.

Subject to the terms and conditions of this MOU, Port and SFFD agree to use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU and SFFD's request for the use of the Premises as expeditiously as practicable, including performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to both parties. Nothing in this MOU in any way limits the right of either party, or any department, board or commission with jurisdiction over the matters addressed in this MOU, to exercise any discretion available to such party, department, board or commission with respect to the same. In addition to any conditions described in this MOU, the obligations of Port and SFFD are expressly subject to the receipt of all legally required approvals following environmental review.

25. DISPUTES.

In the case of a dispute between the Parties, the appropriate staff person from the Port and SFFD, starting from level 1 below, shall in good faith meet with each other to resolve the contested issues. If staffs from level 1 are unable to resolve the dispute, the matter shall be forwarded to levels 2, 3, and 4 as applicable (or their designated staff) to meet in good faith with each other to resolve the contested issues.

Escalation Ladder:

Level	SF Port Contact	SFFD Contact
1	James Hurley Development Project Manager (415) 274-05098 James.hurley@sfport.com	(415)
2	Mark Lozovoy Assistant Deputy Director, Real Estate (415) 274-0575 mark.lozovoy@sfport.com	(415)
3	Michael Martin Deputy Director Real Estate and Development (415) 274-0544 michael.martin@sfport.com	(415) 551-4354
4	Elaine Forbes Executive Director	Jeanine Nicholson Chief of Department

26. SURRENDER OF PREMISES.

On the Expiration Date, SFFD shall surrender the Premises free of Fireboat Station 35 and free of all other improvements, access ramps, guide piles and all other associated appurtenances, unless Port directs otherwise, in its sole discretion. SFFD shall hold Port harmless from and against any and all loss or liability resulting from SFFD's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant or developer founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant or developer, together with, in each case, actual attorneys' fees and costs.

27. MINERAL RESERVATION.

The State of California ("State") pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises and SFFD acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to for any claims arising from the State's exercise of its rights.

28. MISCELLANEOUS.

(a) Modification. This MOU may be amended or modified only by a writing signed by Port and SFFD.

(b) Waiver. No waiver by any party of any of the provisions of this MOU will be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such waiver.

(c) Integration. This MOU (including any exhibits) contains the entire understanding between the parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

(d) Applicable Laws. All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and federal laws.

(e) References to and obligations of Port and SFFD include their respective employees, agents, invitees, contractors, vendors any other person whose rights arise through them.

29. ENTIRE AGREEMENT.

This MOU (including attached exhibits) contain the entire understanding between the parties with respect to SFFD use of Pier 22 ½.

[REMAINDER OF PAGE LEFT BLANK.]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first written above.

AGREED TO AS WRITTEN ABOVE:
SAN FRANCISCO PORT COMMISSION

AGREED TO AS WRITTEN ABOVE:
SAN FRANCISCO FIRE DEPARTMENT

By: _____
Michael J. Martin
Deputy Director, Real Estate and
Development
Port of San Francisco

By: _____
Jeanine Nicholson
Chief of Department
San Francisco Fire Department

REVIEWED:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Port Commission Resolution No.

Prepared by: Mark Lozovoy, Assistant Deputy Director _____(initial)

EXHIBIT A

DESCRIPTION OF PROJECT

[Attachment on following page]

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EXHIBIT B

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT C

MITIGATION MONITORING AND REPORTING PROGRAM

[Attachment on following page]

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EXHIBIT D

OPERATIONS PLAN

[Attachment on following page]

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EXHIBIT E

LOCATION OF SEAWALL

[Attachment on following page]

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SCHEDULE 1

FEMA DISCLOSURE NOTICE

[Attachment on following page]

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page]

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SCHEDULE 3

SUMMARY OF SECRETARY'S STANDARDS

[Attachment on following page]

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SCHEDULE 4

PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES

[Attachment on following page]

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SCHEDULE 5

HAZARDOUS MATERIALS DISCLOSURE

[Attachment on following page]

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