

## **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is entered into as of ~~December 10~~, 20<sup>21</sup> (the "Effective Date"), by and between the City of South San Francisco, a municipal corporation, ("Seller" or "City") and Ensemble Investments, LLC, a California Limited Liability Company ("Buyer"). Seller and Buyer are collectively referred to herein as the "Parties."

### **RECITALS**

A. Seller is the owner of certain real property located in the City of South San Francisco California, also known as San Mateo County Assessor's Parcel Number: 015-010-970 and more particularly described in the legal description and shown as Parcel 6 on Parcel Map 17-0002 recorded on September 25, 2017, both attached hereto and incorporated herein as Exhibit A (the "Property").

B. On March 23, 2011, the City Council approved the Oyster Point Specific Plan and certified the Oyster Point Specific Plan and Phase 1 Project Environmental Impact Report which, among other things, planned for and analyzed the potential environmental impacts of developing a new full-service hotel with up to 350 rooms and approximately 40,000 square feet of retail uses on the Property ("Project").

C. A Disposition and Development Agreement was executed on March 23, 2011, between Oyster Point Ventures, LLC, the South San Francisco Redevelopment Agency, and the City of South San Francisco ("DDA") for the master development of Oyster Point through a multi-phased project, which included the potential development of a hotel on an approximately 4.7 acre portion of the Property known as the "Hotel Site," among other things, the DDA requires Oyster Point Development, LLC, to perform certain site work, grading, and installation of infrastructure to prepare the Hotel Site for development.

D. In 2017, the City solicited proposals from qualified hotel developers through an RFQ/RFP process, and upon review of the responsive proposals, the City's Joint Housing Standing Committee made a recommendation at its December 11, 2017, meeting that the City enter into an Exclusive Negotiating Rights Agreement ("Original ENRA") with Buyer for the development of a new full-service hotel on the Hotel Site. The City approved the Original ENRA with Buyer on April 11, 2018 and the Parties negotiated terms and conditions of the purchase and development of the Hotel Site pursuant to that Original ENRA. As part of the Original ENRA, Buyer previously deposited \$100,000 to the City ("ENRA Deposit") to be held in an interest bearing account of the City and credited towards Buyer's purchase price of the Hotel Site. The Original ENRA was subsequently amended by the First Amendment to the Exclusive Negotiating Rights Agreement and the term of the ENRA was extended three additional times through subsequent amendments (the four amendments to the ENRA together with the Original ENRA, are collectively, referred to herein as the "ENRA"). The ENRA Deposit with any and all interest accrued thereon, will be applied towards the Purchase Price at Closing (as defined in Section 2.2 below).

E. Seller has verified to its reasonable satisfaction that the Buyer is or, upon execution of this Agreement, will be financially capable to prepare and process entitlements for the Project.

F. Seller and Buyer have entered into a separate agreement to address the soft costs associated with certain design work the Seller has requested Buyer to perform in connection with the future development of a ferry terminal located on a Seller-owned property adjacent to the Hotel Site, commonly known as and referred to herein as the "Spit Property" (the "Cost-Sharing Agreement"). Buyer has paid One Hundred and Fifty Thousand Dollars (\$150,000) in consulting services for the initial soft costs associated with the design and development of the Spit Property (the "Spit Reserve Funds"). The Spit Reserve Funds will not be applied towards the Purchase Price at Closing, nor paid to Seller in the event this Agreement is terminated for any reason. Buyer has provided all documents created by the consultant to City and City has accepted Buyer's performance under the Cost-Sharing Agreement as complete and satisfactory.

G. Buyer agrees to purchase the Property, and Seller agrees to sell the Property to Buyer, subject to the terms and conditions memorialized in this Agreement.

H. In connection with this Agreement, Buyer and Seller intend to negotiate a separate development agreement to address the financing and construction of the Project (the "Development Agreement").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the "Purchase Price") is One Million dollars (\$1,000,000). The Purchase Price shall be paid in cash or other immediately available funds at the Closing to the Seller in accordance with Section 5.5(b). The Seller will retain the ENRA Deposit of \$100,000 and at Closing, the ENRA Deposit with any and all interest accrued, will be applied towards the Purchase Price.

3. ESCROW.

3.1 Escrow Account. Seller has opened an interest-bearing escrow account (the "Escrow") maintained by Chicago Title Insurance Company, 455 Market Street, #2100, San Francisco, CA 94105 (the "Escrow Holder" and the "Title Company"), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within two (2) business days after the Effective Date, the Parties will deposit into Escrow this fully executed Agreement, or executed counterparts hereto. The date such fully executed version of this Agreement is received by Escrow Holder will be deemed the "Opening of Escrow" and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 Buyer's Deposit. Within three (3) business days after the Opening of Escrow, the Buyer shall deposit Thirty Thousand dollars (\$30,000) in Escrow ("Initial Deposit") accounting for 3% of the total Purchase Price. If the Due Diligence Contingency Period (as defined in Section 5.2(a) below) is extended pursuant to Section 5.2(a), Buyer shall deposit an additional Fifty Thousand dollars (\$50,000) in Escrow (the "Additional Deposit") accounting for 5% of the total Purchase Price. The Initial Deposit and Additional Deposit are sometimes collectively referred to herein as the "Deposits."

3.4 Satisfaction of Due Diligence Contingency. Buyer shall have the right, in its sole discretion, to terminate this Agreement for any reason prior to the expiration of the Due Diligence Contingency Period (as defined in Section 5.2) and receive a refund of the Deposits. Buyer hereby agrees to provide written notice to Seller prior to the expiration of the Due Diligence Contingency Period if Buyer disapproves any due diligence items or approves all due diligence items ("Approval Notice"). If Buyer disapproves any items through the delivery of the Approval Notice to Seller before 5:00 p.m. on the last day of the Due Diligence Contingency Period, this Agreement shall terminate, and all amounts deposited by Buyer into Escrow (except the ENRA Deposit and the Independent Consideration referenced below), together with interest thereon, if any, will be returned to Buyer, and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. If Buyer fails to timely deliver the Approval Notice to Seller, it will be conclusively presumed that Buyer has approved all such items, matters or documents.

3.5 Independent Consideration. As independent consideration for Seller's entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of One Thousand dollars (\$1,000) to Seller through Escrow ("Independent Consideration"). In the event that Buyer terminates this Agreement in accordance with Section 3.4 above, Seller shall retain the Independent Consideration; in the event that Buyer does not terminate this Agreement as aforesaid, the Independent Consideration shall be applied to the Purchase Price at Closing.

#### 4. DILIGENCE AND TITLE REVIEW.

4.1 Condition of Title/Preliminary Title Report. Escrow Holder shall deliver a Preliminary Title Report for the Property (the "Preliminary Report") to Buyer within three (3) days after the Opening of Escrow. During the Due Diligence Contingency Period, and no later than ten (10) business days prior to expiration of the Due Diligence Contingency Period, Buyer shall deliver to Seller written notice (the "Title Objection Notice") of its objections to matters identified in the Title Report ("Disapproved Exceptions"). Buyer's failure to timely deliver the Title Objection Notice shall be deemed Buyer's disapproval of the Title Report and Buyer's election to terminate this Agreement, whereupon the Deposits and all interest accrued thereon shall immediately be released by Escrow Holder to Buyer. Seller shall have seven (7) business days after receipt of Buyer's Title Objection Notice to notify Buyer in writing ("Seller's Title Notice") that either, (a)

Seller will cure or remove such Disapproved Exceptions from title prior to Closing (or cause the Title Company to issue an endorsement reasonably satisfactory to Buyer insuring Buyer as to such matter), or (b) Seller elects not to cure or cause the Disapproved Exceptions to be removed. If Seller refuses to cure or remove any Disapproved Exceptions, then, within five (5) business days after Buyer's receipt of Seller's Title Notice or prior to the expiration date of the Due Diligence Contingency Period, whichever is earlier, Buyer may either (a) notify Seller in writing that it has elected to waive the Disapproved Exceptions and proceed with the purchase contemplated herein, or (b) terminate this Agreement, whereupon, the Deposits and all interest accrued thereon shall immediately be released by Escrow Holder to Buyer, and neither Party shall have any further obligation or liability to the other with respect to the transaction contemplated by this Agreement, except for those that expressly survive termination.

Notwithstanding anything to the contrary contained above or elsewhere herein, Seller shall be obligated to cause all deeds of trust, tax liens, abstracts of judgments, mechanics' liens, or similar monetary liens or encumbrances which require any monetary payment to be removed or released from title to the Property, including those secured by leasehold or subleasehold estates, on or before the Closing, except for non-delinquent real property taxes and assessments (collectively, "Monetary Liens"). For the purpose of the foregoing, any monetary obligations, costs, or payments associated with the Property owner's obligations pursuant to the Postclosure Monitoring and Maintenance Plan dated September 8, 2017 and the San Francisco Regional Water Quality Control Board Order No. 00-0146 issued on June 21, 2000, as each has been amended from time to time shall not be considered Monetary Liens. If Seller elects to cure or remove any Disapproved Exceptions, but fails to do so prior to Closing, then Buyer shall have the right to terminate this Agreement and to receive full reimbursement of the Deposits, and may pursue other remedies available to it under the Agreement. For purposes of this Agreement, any title matters approved by Buyer (or for which Buyer has withdrawn an objection) pursuant to this Section 4.1 are referred to herein as the "Permitted Exceptions." In no event shall the Permitted Exceptions include any Monetary Liens.

(a) **Due Diligence Materials.** Seller shall provide to Buyer copies of all actually known and reasonably available documents relating to the ownership and operation of the Property, including but not limited to plans, permits, maps, surveys, agreements and reports (environmental, structural, mechanical, engineering, soils, grading and geotechnical) that Seller has to its actual knowledge within its possession or control (collectively, the "Due Diligence Materials") not later than fourteen (14) calendar days following the execution and delivery of this Agreement, or as soon as practicable thereafter. The term Due Diligence Materials does not include Environmental Documents (defined below). For the purposes of this Agreement, "Seller's actual knowledge" or information "actually known" by Seller means the current, actual knowledge of the City Manager, Public Works Director, and City Engineer. Nothing in this Section 4.1(a) shall excuse or otherwise diminish Seller's obligation to provide any disclosures regarding natural hazards or environmental conditions otherwise required for the proposed property transfer by any applicable laws, statutes, ordinances, rules, regulations, permits, certificates, judgments, decisions, decrees or orders of any governmental authority ("Applicable Laws").

**4.2 Environmental Conditions and Environmental Documents.** Seller has disclosed and hereby discloses to Buyer that the Property lies within an area that was formerly operated as a landfill and as such, materials, including solid and liquid waste, municipal waste, construction

materials, debris, and Hazardous Materials (collectively, “Landfill Materials”) are present at, on, under and emanating to and from the Property. In addition, the presence and breakdown of Landfill Materials at, under and adjacent to the Property has led and will continue to lead to, among other conditions: (a) the existence and generation of methane, other landfill gases, and other volatile organic compounds at, on, under and emanating to and from the Property; and (b) the settlement, including differential settlement, of the Property and adjacent areas (collectively, “Landfill Conditions”).

The former landfill on the Property is regulated by, among other things, Order No. 00-46 issued by the San Francisco Regional Water Quality Control Board (“Water Board”) to the Seller on June 21, 2000 (“Order No. 00-46” or “Order”). The Order imposes closure and post-closure requirements, including performing sampling, analyses, and observations of groundwater, leachate, and surface water and submitting the results in semiannual and annual reports to the Water Board. A Final Closure Plan (“Final Closure Plan”) and a Postclosure Maintenance and Monitoring Plan (“Postclosure Plan”) (collectively, the “Closure Plans”), each dated September 8, 2017, were prepared pursuant to the Order. The former landfill area, including the Property, and the Landfill Materials will continue to be subject to the Order and the Closure Plans, as each of these documents may be amended from time to time with the approval of the Water Board. The Closure Plans assign certain ongoing obligations to the Seller and certain obligations to the future owner of the Property, as identified in Table 1 (the “Postclosure Responsibility Matrix”) of the Postclosure Plan<sup>1</sup>, which is set forth herein as Exhibit E.

Additional documents relating to environmental conditions, activities, and requirements at the Property, including investigation, remediation, mitigation, operation and maintenance measures, are available on the Water Board’s Geotracker database (including at the following link: [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=L10009323371](https://geotracker.waterboards.ca.gov/profile_report?global_id=L10009323371)), as well as from other governmental entities, such as the California Department of Toxic Substances Control, the State Water Resources Control Board, and the County of San Mateo (collectively, the “Environmental Documents”). The Landfill Materials, Landfill Conditions, and all conditions identified or otherwise referenced in the Environmental Documents as of the Closing Date, are collectively referred to herein as the “Pre-Existing Property Conditions.”

4.3 Notice Pursuant to Health & Safety Code Section 25359.7. California Health & Safety Code Section 25359.7 requires an owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property to, prior to the sale of the real property by that owner, provide written notice of that condition to the buyer. In accordance with that section, Seller hereby notifies Buyer that hazardous materials, including hazardous substances, have come to be located on and beneath the Property, including Landfill Materials and Landfill Conditions, and other hazardous materials as set forth in the Environmental Documents.

#### 4.4 Inspection of Property; Access Rights.

(a) During the Due Diligence Contingency Period, Buyer or its agents shall be permitted to enter onto the Property to perform inspections and reasonable testing of the Property,

<sup>1</sup> See Pages 8-10 of the Postclosure Plan.

including without limitation, soil samples, boring, and backhoe pits in order to assess the condition of the subsurface of the Property or other similar intrusive or invasive action on or under the Property. All physical inspections must be performed in accordance with this Agreement and coordinated with Seller's representative. Developer agrees to notify the City seventy-two (72) hours in advance of its intention to enter the Property.

(b) Pursuant to the Bay Conservation and Development Commission ("BCDC") Permit No. 2017.007.00, originally issued on April 27, 2018 and amended on July 30, 2021 as Amendment No. 2, and any amendments thereto (the "BCDC Permit") attached hereto and incorporated herein as Exhibit B, Developer shall be responsible for construction of the temporary north-south Bay Trail connection no later than 6 months following the completion of Phase IC, with the construction of a 12-foot-wide accessible interim path that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the Hotel Site, to the southern sidewalk to Marina Boulevard. Seller agrees to provide prompt written notice to Buyer no less than thirty days in advance of the anticipated completion date for the Phase IC work. Prior to Closing, Buyer or its agents shall be entitled to enter onto the Property to complete construction of the temporary Bay Trail improvements subject to and consistent with all applicable provisions of the BCDC Permit, and to diligently process any permits required to install the temporary trail improvement. Access to the Property for such construction shall be coordinated with Seller's representative.

(c) In exercising its rights or performing any work under this Section 4.4, Buyer hereby agrees to indemnify and hold Seller harmless for any claims, actions, losses, liabilities, damages, costs, and expenses ("Access Claims and Losses") incurred, suffered by or claimed against Seller by reason of Buyer's entry onto or in connection with Buyer's inspection and testing of the Property by Buyer and/or its agents, employees, or contractors ; provided, however, that Buyer shall have no obligations to indemnify, defend, protect and hold harmless Seller for Access Claims and Losses to the extent resulting from the negligence or willful misconduct of Seller or Buyer's mere discovery of pre-existing adverse physical conditions in, on, or under the Property.

#### 4.5 Development Agreement, Preliminary Pro Forma and Project Entitlements.

(a) Buyer and Seller agree to negotiate diligently and in good faith the terms of the Development Agreement on such terms set forth in the Development Agreement term sheet attached hereto as Exhibit C and such other terms as shall be acceptable to each party in its sole discretion. Buyer and Seller will also work diligently and in good faith to process all discretionary entitlements for the Project concurrently with the negotiation of the Development Agreement. Buyer will use good faith efforts to submit an entitlement application and seek City Council approval of the Development Agreement and all discretionary entitlements for the Project prior to the Closing Date (as defined in Section 5.1 below). Notwithstanding anything else to the contrary, if the Buyer fails to submit a precise plan and associated entitlement application by May 1, 2022, then the Seller, in its sole discretion, may elect to terminate this Agreement and may retain all Deposits paid pursuant to this Agreement. In the event that Seller exercises its right to terminate pursuant to this provision, neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. The Parties acknowledge that the second reading of the ordinance approving the Development Agreement may occur after Closing, in which case the Development Agreement shall be executed and recorded post-Closing. However,

if the Development Agreement has been fully approved by the City Council prior to December 31, 2022, then an executed copy of the Development Agreement will be deposited into escrow and recorded by the San Mateo County recorder concurrently with the Close of Escrow.

(b) Buyer will submit to the Seller documentation that reasonably demonstrates to the City's reasonable satisfaction the financial feasibility of Buyer's proposed development of the Project at least seven (7) business days prior to expiration of the Due Diligence Contingency Period.

(c) Seller has no legal obligation to grant any approvals or authorizations for the Development Agreement and discretionary entitlements for the Project until the Development Agreement and discretionary entitlements have been approved by the City Council. Such approvals, and any future approvals required as part of the entitlement process, are subject to completion of environmental review by City in accordance with the California Environmental Quality Act, and City shall not take any discretionary actions committing it to a particular course of action in connection with the Project until City has completed, considered and certified/approved any additionally required CEQA environmental review documents.

## 5. CLOSING, CONDITIONS OF CLOSING, AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. The escrow for conveyance of the Property shall close ("Close of Escrow" or "Closing") within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Buyer's Closing Conditions (as defined in Section 5.2 below) and all of the Seller's Closing Conditions (as defined in Section 5.3 below), which shall occur no later than December 31, 2022, or such earlier date that Buyer may specify to Seller with thirty (30) days prior written notice (the "Closing Date").

5.2 Buyer's Conditions to Closing. Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions ("Buyer's Closing Conditions") or Buyer's written waiver thereof (in Buyer's sole discretion) on or before the Closing Date:

(a) Buyer has approved the condition of the Property. Buyer will have thirty (30) calendar days from receipt of the Due Diligence Materials or forty-five (45) calendar days following the Effective Date, whichever is earlier (the "Due Diligence Contingency Period") to review the suitability of the Property for Buyer's Project, including to investigate title and to conduct any feasibility, economic, environmental, or other such investigations, studies, and tests with respect to the Property as Buyer deems necessary or appropriate, and to approve or disapprove of such matters in Buyer's sole and absolute discretion. Buyer may request one (1) thirty-day extension of the Due Diligence Contingency Period and such extension will be granted if (i) Buyer has paid Buyer's Additional Deposit and (ii) Buyer has made reasonable efforts in Seller's reasonable determination to pursue all matters identified in Section 4 which must be completed prior to the expiration of the Due Diligence Contingency Period. Buyer must notify Seller of its desire to extend, in writing, at least seven (7) days before the end of the initial Due Diligence Contingency Period.

(b) Seller shall have delivered to Buyer or Escrow Holder all of the items required to be delivered to Buyer pursuant to this Agreement, including, but not limited to, those provided for in Section 5.5 (a).

(c) Seller or its City Council shall have approved all discretionary entitlements necessary to construct the Project, including the first reading of an ordinance approving the Development Agreement.

(d) Seller has performed all obligations to be performed by Seller as of the Closing Date pursuant to this Agreement.

(e) Seller's representations and warranties herein are true and correct in all material respects as of the Closing Date.

(f) The Title Company is irrevocably committed to issue an ALTA standard coverage title insurance policy to Buyer, effective as of the Closing Date, insuring fee simple title to the Property vested in Buyer in the full amount of the Purchase Price and subject only to the Permitted Exceptions (the "Title Policy").

If any of the Buyer's Closing Conditions shall not have been satisfied on or before the Closing Date, then Buyer shall have the right to either (i) waive any such unmet Buyer's Closing Conditions and proceed with Closing, or (ii) elect to not proceed with Closing by giving written notice to Seller of such election prior to the Closing Date, in which case the Deposits shall be immediately released to Seller and this Agreement shall terminate; provided, however, if such Buyer's Closing Conditions have not been satisfied due to a default on the part of the Seller, the Deposits shall be returned to Buyer and Buyer shall also have its rights under Section 7.1.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions ("Seller's Closing Conditions") or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Closing Date:

(a) Buyer shall have delivered to Seller or Escrow Holder all of the items required to be delivered to Seller pursuant to this Agreement, including but not limited to, those provided for in Section 5.5(b).

(b) Buyer has delivered an approved franchise agreement for the Project or an alternative acceptable to the Seller.

(c) Buyer has submitted to Seller a construction schedule for the Project, which is consistent with the post-closing milestones in the Development Agreement, including commencement of construction and substantial completion of the Project, and confirms to the City's reasonable satisfaction the feasibility of Buyer's development of the Project in accordance with the post-closing milestones in the Development Agreement.

(d) Buyer has submitted a final pro forma including pro forma financing terms that confirms to the Seller's reasonable satisfaction the financial feasibility of the Buyer's development of the Project.

(e) Buyer has completed construction of the temporary north-south Bay Trail connection (if required, assuming timely completion of the Phase 1C work) and has incorporated a permanent north-south Bay Trail connection into the entitlements for the Project, as identified in BCDC Permit 2017.007.00, at Buyer's expense and in accordance with the BCDC Permit or any amendments thereto, unless (i) BCDC has waived, released, or otherwise modified the BCDC Permit conditions such that the temporary or permanent trail, as applicable, is no longer required, or (ii) provided an extension of time for construction of the permanent north-south Bay Trail connection. Such trail construction shall be completed two (2) months prior to the deadline imposed by BCDC, as may be amended. Such Bay Trail connections shall comply with the Americans with Disabilities Act and any other applicable standards, requirements, or amendments.

(f) Buyer has taken all steps necessary and required under the Order No. 00-46 and the Closure Plans, to the City's reasonable satisfaction, to assume the applicable obligations of the owner or developer of the Property under the Order No. 00-46 and the Closure Plans respectively, and provided written assurance to Seller that Buyer is unequivocally prepared to assume and perform such obligations, including to the extent that each such document may be amended from time to time with approval of the Water Board. As to Order No. 00-46, such written assurance shall confirm that the date of Closing is the specific date for the transfer of responsibility for the obligations identified in Order No. 00-46 as to the Property. In furtherance of the foregoing condition as to Order No. 00-46, the Buyer shall cooperate with the Seller to notify the Water Board to request a transfer of responsibility of Order No. 00-46 as to the Property, including providing the Seller with the Buyer's full legal name, address, and telephone number of the persons responsible for contact with the Water Board.

(g) Buyer has entered into a binding voluntary oversight agreement with the Water Board (i) pursuant to which the Water Board will oversee Buyer's compliance with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property, and (ii) confirming that with respect to such requirements, the Buyer is the party primarily responsible for such compliance. It is the goal of the parties that, following the Closing Date, Buyer shall be solely responsible to perform, at its sole cost and expense, the compliance activities referenced in (i) and (ii) above. The Parties acknowledge that the City is liable for any violations of Order No. 00-46 or Sections 13267 and 13263 of the California Water Code relating to the Property up to the Closing Date and that the Buyer is liable for any such violations from and following the Closing Date.

(h) Buyer has performed all obligations to be performed by Buyer pursuant to this Agreement before Closing Date.

(i) Seller has secured, at reasonable cost, insurance or a commitment for insurance that covers or substantially offsets, in Seller's reasonable discretion, the risks and liabilities that Seller will retain or to which Seller may be exposed pursuant to this Agreement following the Closing Date. Seller shall notify Buyer in writing no later than ninety (90) calendar days after the Effective Date ("Environmental Insurance Contingency Period") that this condition has either (i) been satisfied or waived by Seller; or (ii) not been satisfied or waived by Seller and Seller has elected to not proceed with Closing, in which case the Deposits shall be immediately released to Buyer and this Agreement shall terminate. If Seller does not indicate its election prior to the expiration

of the Environmental Insurance Contingency Period, Seller shall have been deemed to have waived this condition.

(j) Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

(k) Seller has approved all discretionary entitlements for the Project, including the first reading of an ordinance approving a Development Agreement.

Buyer will deliver or complete items (c), (d), (e), (f) and (g) at least seven (7) business days prior to Closing. If any of the Seller's Closing Conditions shall not have been satisfied on or before the Closing Date as a result of a breach or default by Buyer, then Seller shall have its rights under Section 7.2. Notwithstanding the foregoing or anything contained herein to the contrary, if Buyer has failed to satisfy the condition contained in Section 5.3(e) above by the date specified by BCDC or if Seller's Closing Conditions have not otherwise been satisfied on or before December 31, 2022, the Seller may, in its sole discretion, immediately terminate this Agreement. For the avoidance of doubt, the Parties acknowledge that the second reading of the ordinance approving the Development Agreement may occur after Closing, in which case the Development Agreement shall be executed and recorded post-Closing. However, if the Development Agreement has been fully approved by the City Council prior to December 31, 2022, then an executed copy of the Development Agreement will be deposited into escrow and recorded concurrently with the Close of Escrow.

5.4 Conveyance of Title. Seller will deliver marketable fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions. As provided in Section 6.3 and further herein, the Property will be conveyed by Seller to Buyer in an "as is" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by Section 13); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge or its obligations under Section 10.

#### 5.5 Deliveries at Closing.

(a) Deliveries by Seller. Prior to Closing, Seller shall deposit the following into the Escrow: (i) one (1) original executed and acknowledged grant deed, substantially in the form attached hereto as Exhibit D ("Grant Deed"); ; (ii) one (1) duly executed affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "Non-Foreign Affidavit"); (iii) one (1) duly executed California Franchise Tax Board form 590 (the "California Certificate") to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131, and (vi) such other instruments, funds, and documents as required under the terms of this Agreement or reasonably requested by Escrow Holder, including any such affidavits necessary to issue the Title Policy.

(b) Deliveries by Buyer. Prior to Closing, Buyer shall deposit the following into the Escrow: (i) no less than one (1) business day prior to the Close of Escrow, Buyer shall deposit into Escrow immediately available funds in the amount, which together with the Independent

Consideration, the Deposits, and the ENRA Deposit is equal to the Purchase Price as adjusted by any prorations between the Parties; (ii) one (1) original executed Preliminary Change of Ownership Report for the Property; (iii) the escrow fees and recording fees; (iv) the cost of the Title Policy; and (v) such other instruments, funds, and documents as required under the terms of this Agreement or reasonably requested by Escrow Holder.

(c) Closing. Upon Closing, Escrow Holder shall: (i) record the Grant Deed; (ii) disburse to Seller the Purchase Price, less Seller's share of any fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate and the original recorded Grant Deed; (iv) pay any commissions and other expenses payable through Escrow; and (v) distribute to itself the payment of Escrow fees and expenses required hereunder.

(d) Closing Costs. Buyer will pay all Escrow fees (including the costs of preparing documents and instruments), and recording fees. Buyer will also pay title insurance and title report costs. Seller will pay all transfer taxes and governmental conveyance fees, where applicable.

(e) Pro-Rations. At the Close of Escrow, the Escrow Holder shall make the following prorations: (i) property taxes will be prorated as of the Closing Date based upon the most recent tax bill available, including any property taxes which may be assessed after the Closing Date but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered. Seller does not pay ad valorem taxes.

## 6. REPRESENTATIONS AND WARRANTIES.

6.1 Seller's General Representations and Warranties. In addition to the representations and warranties of Seller contained in Section 6.2 below pertaining to Seller's Environmental Representations and Warranties (which are Seller's exclusive representations and warranties pertaining to the environmental issues at or associated with the Property), Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing Date (subject to any knowledge qualifications set forth therein) provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 3.4 pertaining to return of funds deposited into Escrow will apply. Seller's representations and warranties under this Section 6.1 do not apply to any matter addressed, directly or indirectly, in Section 6.2 below.

(a) Authority. Seller is a municipal corporation, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as

disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force.

(c) There are no agreements to the Seller's actual knowledge, affecting the Property except those which have been disclosed by Seller in writing.

(d) There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to Seller's actual knowledge based on reasonable investigation, threatened against Seller, relating to the Property or relating to or arising out of the ownership, management, or operation of the Property, in any court or before any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality, and Seller has received no notice thereof except those which have been disclosed by Seller in writing.

(e) Seller has delivered to Buyer all of the documents and materials required to be delivered by Seller pursuant to Section 4.1, and none of the documents and materials delivered by Seller to Buyer pursuant to Section 4.1 contain any material misstatements or omissions to the Seller's actual knowledge .

The foregoing representations and warranties shall survive Close of Escrow of this Agreement and shall not be deemed merged into the deed upon Closing.

6.2 Seller's Environmental Representations and Warranties. Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.2 are each true and correct as of the Closing Date (subject to any knowledge qualifications set forth therein) provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 3.4 pertaining to return of funds deposited into Escrow will apply.

(a) To Seller's actual knowledge, there are no Hazardous Materials (as defined by Section 13) or environmental contamination located on the Property in violation of any Environmental Laws (as defined by Section 13), and no pending or threatened proceeding or notices by any governmental authority with respect to the presence, suspected presence, or release of Hazardous Materials on the Property or the migration thereof from or to other property, except as such information has been previously disclosed by Seller in writing or is otherwise made available or reasonably known to Buyer, including, but not limited to, information contained in the Environmental Documents.

(b) To Seller's actual knowledge, the Due Diligence Materials and the Environmental Documents are the only documents that identify the Pre-Existing Property Conditions (as defined in Section 6.3 below).

(c) Seller has disclosed the presence of landfill materials and certain Hazardous Materials on the Property to Buyer, which are subject to the terms and conditions of the Postclosure Plan and Order No. 00-46.

Other than the express representations and warranties of Seller specifically set forth in Section 6.1 and Section 6.2 of this Agreement, Seller makes no representations or warranties of any kind, express or implied, as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) Pre-Existing Property Conditions, (iv) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (v) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (vi) except as otherwise provided in this Agreement, the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vii) except as otherwise specifically provided in this Agreement, the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (viii) except as otherwise specifically provided in this Agreement, the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property, (ix) the quality of any labor and materials used in any improvements on the Property, (x) the condition of title to the Property, (xi) the leases, service contracts, or other agreements affecting the Property, or (xii) the economics of the operation of the Property.

6.3 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.3 are each true as of the Effective Date, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing.

(a) Buyer is a California Limited Liability Company. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute, and has the financial means and expertise to complete all of Buyer's obligations under this Agreement.

6.4 Property Sold, "AS IS". Buyer specifically acknowledges that the Seller is selling the Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that, subject only to Seller's specific representations and warranties in Section 6.1 and Section 6.2 of this Agreement, Buyer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, or its employees, appointed or elected officials, agents, attorneys, contractors or brokers as to any matters concerning the Property. Buyer is a sophisticated purchaser and its consultants have reviewed or have had the opportunity to review the Due Diligence Materials and Environmental Documents and to perform due diligence relating to the Property, the Pre-Existing Property Conditions, the landfill, and Landfill Materials to the full extent desired by Buyer, in its sole discretion. Any decision by Buyer to acquire the Property is based solely on

Buyer's own due diligence and evaluation of the Pre-Existing Property Conditions and the limited representations specifically set forth in Section 6.1 and 6.2 of this Agreement by Seller.

## 7. DEFAULT, REMEDIES, TERMINATION.

7.1 In the event of a breach or default under this Agreement by Seller, which is not cured within ten (10) days (such longer period as may be reasonably required to cure such default) after written notice, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance until Seller is able to perform with the understanding that such extension cannot extend beyond December 31, 2022; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer (including the Deposits), reserving all other rights and remedies available to it under this Agreement or otherwise at law or in equity, including the right to collect costs and damages for such breach from Seller .

7.2 IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER WHICH IS NOT CURED WITHIN TEN (10) DAYS (OR SUCH LONGER PERIOD AS MAY BE REASONABLY REQUIRED TO CURE SUCH DEFAULT) AFTER WRITTEN NOTICE AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER MAY ELECT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND/OR MAY RETAIN THE DEPOSITS AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, THE DEPOSITS REPRESENT A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND ARE NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ.

IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.

DS  
LB

Buyer's Initials

DS  
MF

Seller's Initials

8. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the procurement of the Property or negotiation of this Agreement. Each party shall indemnify, hold harmless and defend the other party from any and all claims, actions and liability for any breach of the party's respective representation, and any commission, finder's fee, or similar charges arising out of the transactions contemplated by this Agreement.

9. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other. No permitted assignment of any of

the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement. Notwithstanding any provision hereof, Buyer may assign this Agreement without the consent of Seller to one or more entities controlled by, or under common control with, or owned in whole or in part by Buyer, provided, Buyer shall not be released from its obligations under this Agreement. As used in this subsection, “controlled” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities, partnership interest, contracts (other than those that purport to transfer Buyer’s interest to a third party not specifically identified in this subsection) or otherwise.

## 10. INDEMNIFICATION.

10.1 Indemnification by Seller. Except for the Claims (as defined below) released by Buyer pursuant to Section 11.1, Seller agrees to the fullest extent allowed by law to indemnify, protect, defend (with counsel satisfactory to Buyer), and hold Buyer and its officers, directors, managers, members, employees, agents, contractors, subcontractors, consultants, invitees, or licensees acting on behalf of Buyer (collectively, “Buyer Indemnitees”) harmless from and against any and all Claims suffered by Buyer Indemnitees, to the extent caused by:

(a) Any material misrepresentation or breach of warranty or covenant made by Seller in this Agreement, provided that Seller’s obligations under this Section 10.1 shall not apply to any misrepresentation or breach of warranty or covenant actually known to and waived by Buyer prior to Closing;

(b) Claims brought by any third party to the extent caused by the Pre-Existing Property Conditions; provided, however, Seller’s obligations hereunder shall not apply to the extent that such third party claims are caused by the acts or negligent omissions of Buyer or any Buyer Indemnitee, including without limitation: (i) Buyer’s design, construction, operation, use, and/or maintenance of the Project; (ii) Buyer’s performance of or failure to perform Buyer’s Post-Closing Mitigation Measures (as defined in Section 14.1 below); (iii) Buyer’s design, construction, operation, use, and/or maintenance of any of Buyer’s Post-Closing Mitigation Measures; (iv) Buyer’s failure to install, operate, maintain or upgrade Vapor Intrusion Mitigation System (“VIMS”)/Methane Mitigation System (“MMS”) in accordance with Best Management Practices (for the purposes of this Agreement “Best Management Practices” means methods that are identified in the conditions of approval for the Project imposed pursuant to the entitlement process and during the plan check process prior to issuance of building permits) or as required by Applicable Law, including in response to changed, unexpected, or unanticipated conditions at the Project; (v) Buyer’s breach of this Agreement; and (vi) failure by Buyer to provide any notice, disclosure or other information required by Applicable Laws in connection with the presence or potential presence of Pre-Existing Property Conditions at or otherwise relating to the Project, provided, however, that Seller’s obligations to Buyer Indemnitees under this Section 10.1(b) shall not be excused by the mere discovery by a Buyer Indemnitee of a Pre-Existing Property Condition; and

(c) Claims to the extent caused by Seller’s: (i) violation of Applicable Laws pertaining to the Pre-Existing Property Conditions from and after the Closing Date; and (ii) performance of or failure to perform Seller’s Post-Closing Mitigation Measures from and after the Closing Date.

Notwithstanding anything to the contrary herein, Seller's obligations under this Section 10.1 shall not apply to any Claims for any alleged lost profits, lost opportunity, or alleged consequential, speculative, contingent or punitive damages.

10.2 Indemnification by Buyer. Except for the Claims released by Seller pursuant to Section 11.2, Buyer agrees to the fullest extent allowed by law, to indemnify, protect, defend (with counsel satisfactory to Seller), and hold Seller (and its elected and appointed officers, officials, directors, legislative body members, managers, employees, consultants, contractors, subcontractors, attorneys, agents, invitees, and/or licensees acting on behalf of Seller; collectively "Seller Indemnitees") harmless from and against any and all Claims (as defined in Section 11.1(a)) suffered by Seller Indemnitees, at any time or times after the Closing Date, to the extent caused by:

(a) Any material misrepresentation or breach of warranty or covenant made by Buyer in this Agreement, provided that Buyer's obligations under this Section 10.2 shall not apply to any misrepresentation or breach of warranty or covenant actually known to and waived by Seller prior to Closing;

(b) The acts or negligent omissions of Buyer or any Buyer Indemnitee, including without limitation: (i) Buyer's design, construction, operation, use, and/or maintenance of the Project; (ii) Buyer's performance or failure to perform Buyer's Post-Closing Mitigation Measures; (iii) Buyer's design, construction, operation, use, monitoring, and/or maintenance of any of Buyer's Post-Closing Mitigation Measures; and (iv) Buyer's failure to install, operate, maintain or upgrade VIMS/MMS as in accordance with Best Management Practices or required by Applicable Law, including in response to changed, unexpected, or unanticipated conditions at the Project.

Notwithstanding anything to the contrary herein, Buyer's obligations under this Section 10.2 shall not apply to any Claims for any alleged lost profits, lost opportunity, or alleged consequential, speculative, contingent or punitive damages.

The provisions of this Section 10 shall survive the Close of Escrow.

## 11. RELEASES.

### 11.1 By Buyer.

(a) Pre-Existing Property Conditions. Effective upon the Close of Escrow, except with respect to the representations and warranties of Seller under Section 6.1 and 6.2 of this Agreement and the indemnification obligations of Seller under Sections 8 and 10.1, Buyer waives releases, remises, acquits and forever discharges Seller (and its elected and appointed officers, officials, directors, legislative body members, managers, employees, attorneys, consultants, invitees, licensees, agents, and contractors and subcontractors acting on behalf of Seller) from any and all actions, causes of action, charges, claims, compensation, costs, damages, fees (including attorneys' fees and experts' fees), fines, demands, judgments, losses, orders, penalties, rights, and expenses of any kind or type, and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (collectively, "Claims"), which Buyer has or may have, now or in the future, on account of or in any way arising from or in connection with the Pre-Existing Property Conditions.

(b) Buyer's Post-Closing Mitigation Measures. Effective upon the Close of Escrow, Buyer waives, releases, remises, acquits and forever discharges Seller, and its officers, directors, legislative body members, managers, employees and agents, and contractors and subcontractors acting on behalf of Seller, from any and all Claims to the extent arising from or in connection with (a) Buyer's implementation of or failure to implement Buyer's Post-Closing Mitigation Measures (as described in Section 14.1), and (b) Buyer's failure to comply with Applicable Laws pertaining to the Pre-Existing Property Conditions and/or Buyer's Post-Closing Mitigation Measures.

(c) Buyer acknowledges that Buyer is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Effective upon the Close of Escrow, by initialing below, Buyer expressly waives the benefits of Section 1542 of the California Civil Code with respect to the foregoing releases:

Buyer's initials: LB

11.2 By Seller. Effective upon the Close of Escrow, except with respect to the representations and warranties of Buyer under Section 6.3 of this Agreement and the indemnification obligations of Buyer under Sections 8 and 10.2, Seller waives, releases, remises, acquits and forever discharges Buyer, and its officers, directors, members, managers, employees and agents, consultants, invitees, licensees, and contractors and subcontractors acting on behalf of Buyer, from any and all Claims to the extent arising from or in connection with (a) Seller's implementation of or failure to implement Seller's Post-Closing Mitigation Measures (as described in Section 14.2), and (b) Seller's post-Closing failure to comply with Applicable Laws pertaining to the Pre-Existing Property Conditions and/or Seller's Post-Closing Mitigation Measures.

Seller acknowledges that Seller is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Effective upon the Close of Escrow, by initialing below, Seller expressly waives the benefits of Section 1542 of the California Civil Code with respect to the foregoing release:

Seller's initials: \_\_\_\_\_

DS  
MF

The releases provided by Buyer and Seller pursuant to this Section 11 include releases for lost profits, lost opportunity, and consequential, speculative, contingent or punitive damages. This Section 11 shall survive the termination of this Agreement and the Close of Escrow.

12. **ADDITIONAL COSTS AND OBLIGATIONS OF BUYER.** Buyer acknowledges that development of the Project on a former landfill and the Pre-Existing Property Conditions will impact Buyer's construction and operation of the Project, including requiring enhanced or modified construction techniques, managing and accommodating the presence and potential presence of hazardous materials beneath the Property, and the design, installation, operation and maintenance of various mitigation systems, all of which will increase the cost of constructing and operating the Project. Buyer agrees that it shall be solely responsible for all such costs, including each of the following:

(a) **Additional Development Costs.** All additional development costs incurred or necessary due to the fact that development of the Project is occurring on a landfill and/or due to the presence or potential presence of Pre-Existing Property Conditions, such additional costs include the following types of requirements and costs:

- (1) More complex building foundation;
- (2) Additional geotechnical costs;
- (3) MMS design, installation, and maintenance;
- (4) VIMS design, installation, and maintenance;
- (5) Cap management and repair to the extent required in connection with Buyer's construction and operation of the Project;
- (6) Proper management and disposal of waste encountered during development;
- (7) Compliance with Applicable Laws, including compliance arising due to changes in Applicable Laws;
- (8) Delays due to discovery of unanticipated conditions;
- (9) Additional construction precautions due to the presence of hazardous or landfill materials;
- (10) Construction considerations due to existence of cap;
- (11) Compliance with requirements in the Closure Plans; and
- (12) Regulatory oversight of development activities.

(b) System Upgrades. Costs to install, operate, maintain and upgrade VIMS and MMS systems, including in response to changed, unexpected, or unanticipated conditions at the Project or Property.

Nothing in this Section shall be deemed or is intended to affect Seller's obligations under Section 10.1.

13. SELLER'S COVENANTS. From the Effective Date until the Closing Date, unless this Agreement is earlier terminated pursuant to the terms hereof:

13.1 At Seller's sole cost and expense, Seller shall maintain the Property and operate the Property in compliance with all Applicable Laws and governmental orders, including the Post-Closure Plan and Order No. 00-46, and in the same manner as before the making of this Agreement and in the same condition as it currently exists, as though Seller were retaining the Property;

13.2 Seller shall not, after the Effective Date, enter into or terminate any leases, contracts, agreements, or amendments of same, pertaining to the Property without obtaining the prior consent of Buyer;

13.3 Seller shall not encumber the Property with any liens, encumbrances, or other instruments creating a cloud on title or otherwise transferring or disposing of all or any part of the Property or any interest therein, unless the same will be removed, discharged, or paid in full on or before the Closing; and

13.4 Seller shall not offer the Property for sale or lease or otherwise solicit, make, pursue, negotiate, or accept offers for the sale or lease of the Property to any third party.

#### 14. ENVIRONMENTAL POST-CLOSING OBLIGATIONS; HAZARDOUS MATERIALS; DEFINITIONS.

14.1 Buyer's Post-Closing Obligations. Buyer acknowledges that Buyer and its experts have studied and understand the impacts, potential impacts and risks associated with the Pre-Existing Property Conditions on and relating to acquisition, development and operation of the Property and that from and after the Closing Date, Buyer shall design, develop, construct, operate, manage, and maintain the Project in accordance with Best Management Practices applicable to the Project in a manner that mitigates the adverse impacts of said Pre-Existing Property Conditions in accordance with all Applicable Laws, agreements, covenants, directives, guidance, orders, enforceable requirements, and Best Management Practices applicable to the Project and the Property, including Buyer's obligations pursuant to the Postclosure Plan. In addition to the foregoing and Buyer's other obligations under this Agreement, Buyer agrees that it shall implement, operate, and maintain each of the specific mitigation measures identified in Exhibit F ("Buyer's Post-Closing Mitigation Measures").

14.2 Seller's Post-Closing Obligations. In addition to Seller's other obligations under this Agreement, Seller agrees that it shall implement, operate, and maintain each of the specific mitigation measures identified in Exhibit G ("Seller's Post-Closing Mitigation Measures").

14.3 Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified or regulated pursuant to any Environmental Laws (defined below), including as a "hazardous substance", "hazardous material", "waste", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "contaminant", "pollutant", "toxic pollutant", or any other term or formulation intended to define, list, classify or regulate substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, per- and polyfluoroalkyl substances, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, methane, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

Environmental Laws. As used in this Agreement, "Environmental Laws" means any and all federal, state and local statutes, laws (including common laws), ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

The provisions of this Section 14 shall survive the Close of Escrow.

## 15. MISCELLANEOUS.

15.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service

of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

15.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

15.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

15.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

15.5 Governing Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California with venue in the court of competent jurisdiction in San Mateo County.

15.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

15.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

15.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served by email, personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which

provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Buyer: Ensemble Investments, LLC  
444 West Ocean Boulevard  
Suite 650  
Long Beach, CA 90802  
Attn: Senior Vice President, Conrad Garner  
Telephone No.: (562) 435-4857  
cgarner@ensemble.net

With a Copy to: Coblentz Patch Duffy & Bass LLP  
One Montgomery Street, Suite 3000  
San Francisco, CA 94104  
Attn: Frank Petrilli  
Telephone No.: (415) 268-0503  
fpetrilli@coblentzlaw.com

To Seller: City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
Attn: City Manager, Mike Futrell  
Telephone No.: (650) 829-6620  
Fax (650) 829-6609  
mike.futrell@ssf.net

With a Copy to: Meyers Nave PC  
1999 Harrison Street, 9th Floor  
Oakland, CA 94612  
Attn: City Attorney, Sky Woodruff  
Telephone No.: (510) 808-2000  
swoodruff@meyersnave.com

If to Escrow Holder: Tyson Micklebost  
Chicago Title Insurance Co  
One Embarcadero Center, Suite 250  
San Francisco, CA 94111  
Telephone No.: (415) 291-5109  
Tyson.micklebost@ctt.com

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Notice by email transmission shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day, or else on the next business day. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

15.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

15.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

15.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

15.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

15.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

15.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

15.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

15.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

15.17 Possession. At Closing, Seller shall deliver sole and exclusive possession of the Property to Buyer.

15.18 Approvals. Whenever this Agreement calls for Seller approval, consent, extension or waiver, the written approval, consent, or waiver of the Seller's City Manager or his or her designee(s) shall constitute the approval, consent, extension or waiver of the Seller, without further

authorization required from the Seller's Council. The Seller hereby authorizes the City Manager and his or her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce Seller's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the Seller.

15.19 Force Majeure. Buyer shall not be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any obligation under this Agreement, when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of Buyer to perform its obligations under this Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay. Buyer shall give Seller notice within five (5) business days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. Buyer shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. Buyer shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. As used herein, "Force Majeure Event" is any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) governmental authority, proclamations, orders, laws, actions, or requests; (v) embargoes or blockades; (vi) epidemics, pandemics, or other national or regional emergencies; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortages of supplies, adequate power, or transportation facilities.

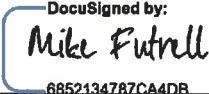
15.20 Environmental Review. This Agreement has been reviewed with respect to the applicability of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). City staff has determined that entering into this Agreement does not have the potential for creating a significant effect on the environment and is therefore exempt from further review under CEQA pursuant to State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. Entering into this Agreement does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Nothing in this Agreement commits the City to a particular course of action with respect to the proposed Project, and the City will not take any discretionary actions committing it to a particular course of action in connection with the proposed Project until the City has completed, considered and certified/approved any additionally required CEQA environmental review documents.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:

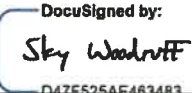
CITY OF SOUTH SAN FRANCISCO

By:   
6852134787CA4DB  
Mike Futrell  
City Manager

ATTEST:

By:   
5908B15FF83F418...   
City Clerk

APPROVED AS TO FORM:

By:   
D47F525AE463483  
Sky Woodruff  
City Attorney

BUYER:

ENSEMBLE INVESTMENTS, LLC,  
a California Limited Liability Company

By:   
BDE8572231FA469...  
Kambiz Babaoff  
Title: \_\_\_\_\_  
Authorized Signatory

LIST OF EXHIBITS

|           |                                           |
|-----------|-------------------------------------------|
| Exhibit A | Legal Description/Parcel Map              |
| Exhibit B | BCDC Permit                               |
| Exhibit C | Development Agreement Term Sheet          |
| Exhibit D | Grant Deed                                |
| Exhibit E | Postclosure Responsibility Matrix         |
| Exhibit F | Buyer's Post-Closing Mitigation Measures  |
| Exhibit G | Seller's Post-Closing Mitigation Measures |

Exhibit A

**LEGAL DESCRIPTION/PARCEL MAP**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS: Parcel 6, as shown on that certain Map entitled "Parcel Map No. 17-0002 Oyster Point", filed for record on September 25, 2017, in Book 83 of Parcel Maps, at Page 50, San Mateo County Records.

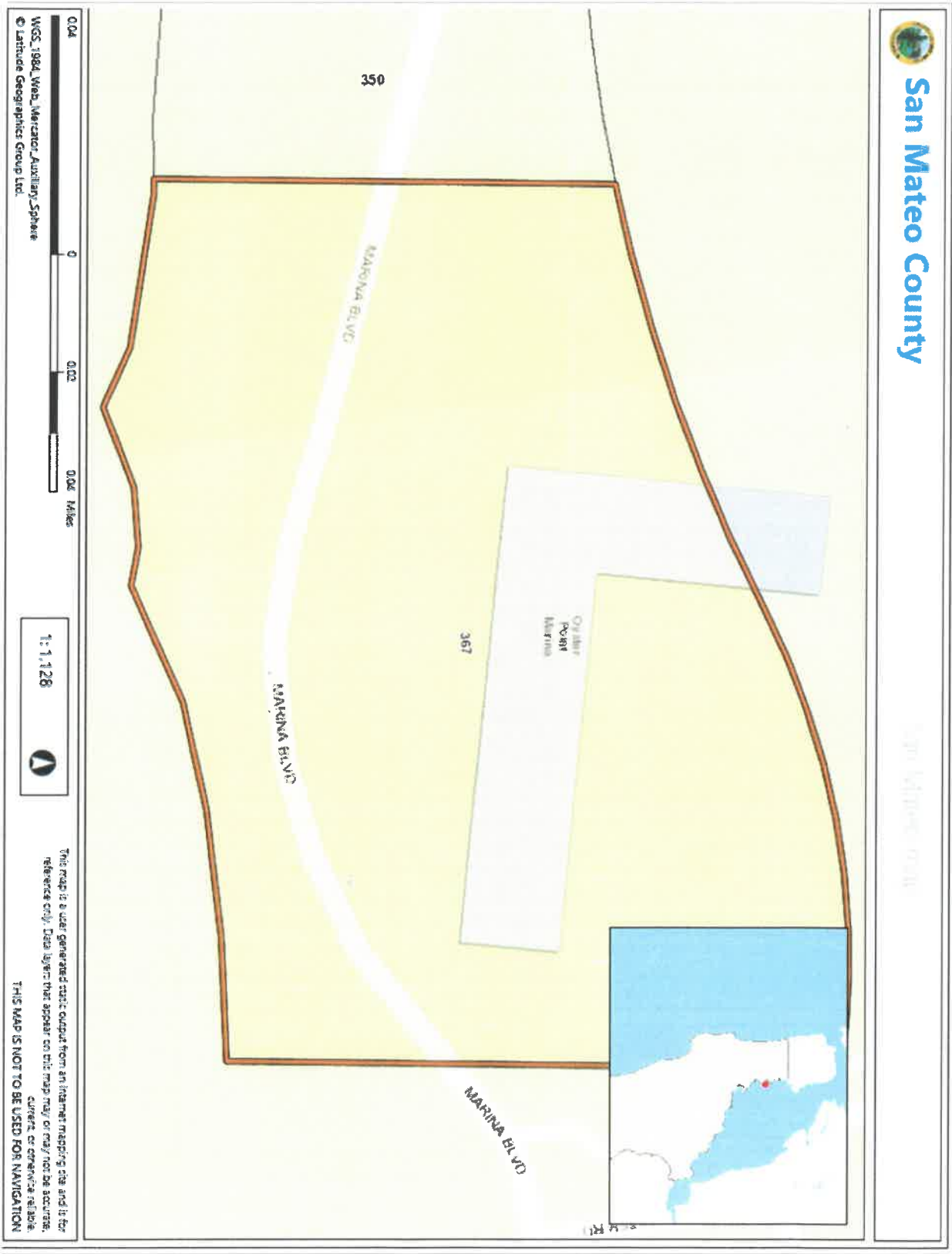


Exhibit B

**BCDC PERMIT**

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

## **PERMIT NO. 2017.007.02**

(Originally Issued on April 27, 2018, and  
Amended Through July 30, 2021)

## **AMENDMENT NO. TWO**

Kilroy Realty TRS, Inc.  
12200 West Olympic Boulevard, Suite #200  
Los Angeles, CA 90064

### **AND**

City of South San Francisco  
315 Maple Avenue  
South San Francisco, California 94080

On April 19, 2018, the San Francisco Bay Conservation and Development Commission, by a vote of 14 affirmative, 0 negative, and 0 abstentions, approved the resolution pursuant to which the original permit had been issued. ~~Moreover, on~~ On September 11, 2020, the Executive Director of the San Francisco Bay Conservation and Development Commission approved Amendment No. One, pursuant to which this amended permit is hereby issued ~~Moreover, on July 30, 2021, the Executive Director approved Amendment No. Two, pursuant to which this amended permit is hereby issued:~~

### **I. Authorization**

- A. **Authorized Project.** Subject to the conditions stated below, the permittees, Kilroy Realty TRS, Inc., and the City of South San Francisco are hereby granted permission to conduct activities, in the Bay and within the 100-foot Shoreline Band as part of the Oyster Point Development Phases IC, ID, and a portion of IIC, at the Oyster Point Marina, partially within an area designated as a “waterfront park/beach” priority use area on the San Francisco Bay Plan Map No. 5, in the City of South San Francisco, San Mateo County.

#### **In the Bay:**

##### **1. Phase IC**

- a. Place approximately 88 cubic yards of sand and soil over an approximately 3,914-square-foot area to repair the clay cap covering the existing landfill;
- b. Restore and maintain an approximately 3,914-square-foot area tidal marsh;
- c. Remove approximately 75 linear feet of an 18-inch-diameter outfall pipe; and
- d. Install two interim floating docks, approximately 1,040 square feet and 1,120 square feet, at the West Basin of Oyster Point Marina to connect Docks 2 to 3 and 4 to 5, respectively, for approximately one year (Amendment No. One).



**Within the 100-foot Shoreline Band and partially within the Waterfront Park, Beach Priority Use Area:**

1. Subdivision of property on approximately 36-acres into six (6) new parcels and one (1) remainder parcel (after-the-fact).
2. **Phase IC**
  - a. Demolish approximately 64,400 square feet of infrastructure and remove approximately 25 feet of an 18-inch-diameter outfall pipe;
  - b. Regrade an approximately 265,600-square-foot (6.10 acre) area;
  - c. Place, use, and maintain approximately 1,944 cubic yards of material across an approximately 26,250-square-foot area to repair the landfill cap;
  - d. Construct, use, and maintain an approximately 400-foot-long portion of Marina Boulevard and approximately 4,400 square feet of sidewalk;
  - e. Enhance, use, and maintain an approximately 2,200-foot-long portion of public access trail and construct, use, and maintain approximately 1,500 linear feet of public access pathways;
  - f. Place, use, and maintain approximately 1,200 cubic yards of material to replenish the approximately 13,000-square-foot beach and construct, use, and maintain a six-foot-wide accessible beach path from the trails to the beach, an approximately 185-square-foot portion of an eight-foot-wide wooden overlook deck, and an approximately 900-square-foot maintenance trail;
  - g. Install, use, and maintain a portion of an approximately 200-square-foot public restroom with a changing station and shower, a portion of an approximately 1,500-square-foot public and private restroom, and an approximately 750-square-foot private restroom;
  - h. Construct, use, and maintain a public access area including an approximately 6,470-square-foot portion of a lawn, an approximately 3,480-square-foot portion of a picnic area, a 3,350-square-foot portion of a flexible gravel area, and an approximately 4,400-square-foot-portion of a parking lot;
  - i. Construct, use, and maintain two (2) 130-foot-long ramps, two (2) 100-foot-long ramps, and two (2) stairways to connect to the Oyster Point Marina gates to Dock One through Dock Seven;
  - j. Landscape a shoreline area with approximately 71,200 square feet of salt marsh vegetation and approximately 51,500 square feet of low groundcover planting; and
  - k. Hydroseed an approximately 40,600-square-foot (0.93-acre) area of the edge of the Parcel 5 Park Area.

**3. Phase ID**

- a. Regrade an approximately 35,000-square-foot area;
- b. Construct, use, and maintain an approximately 41-foot-wide (approximately 28,462 square feet) service lane with an approximately 32-inch tall (approximately 812-foot-long) guardrail, an approximately 174-foot-long retaining wall, and an approximately 210-square-foot portion of an office/R&D complex;
- c. Construct, use, and maintain an approximately 236-square-foot portion of an overlook; and
- d. Landscape an approximately 32,600-square-foot area.

**4. Phase IIC**

- a. Place approximately 1,200 cubic yards of clay soil over an approximately 31,435-square-foot area to repair the clay cap; and
- b. Construct, use, and maintain a set of stairs to the existing windsurfer launch.

**B. Permit Application Date.** This amended authority is generally pursuant to and limited by the application dated September 8, 2017, ~~and~~ the request for Amendment No. One dated August 13, 2020, and the request for Amendment No. Two dated April 26, 2021, including all accompanying and subsequent correspondence and exhibits, subject to the modifications required by conditions hereto.

**C. Deadlines for Commencement and Completion of Authorized Activities.** The activities authorized in the original permit was to commence prior to May 31, 2019, or this permit will lapse and become null and void. All construction work authorized herein must be diligently pursued to completion and completed within three years of project commencement or by May 31, 2022, whichever is earlier, unless an extension of time is sought from the Commission by the permittee and is granted by amendment of the permit. All in-kind maintenance authorized herein, is allowed as long as activities and uses authorized herein remain in place and as long as relevant property interests, including leases, are valid.

The project authorized in Amendment No. One must commence by December 31, 2021 and must be diligently pursued to completion within two years of commencement, or no later than December 31, 2023 unless an extension of time is granted by a further amendment of this amended permit.

**D. Project Summary**

1. **Bay Fill.** The project will result in the placement of 88 cubic yards of fill over an approximately 3,914-square-foot area of tidal marsh along the northern shoreline at the Marina Waterfront area. The fill would repair the clay cap covering the existing landfill to provide the full four feet of Title 27 and Regional Water Quality Control Board required cover over the landfill. To mitigate for the impacts of the fill, the project would restore the impacted area by replanting tidal marsh species and would monitor the area for three years.

2. **Public Access.** The project site is currently a mix of developed areas and open space. Approximately 9.97-acres of open space or public access areas exist today at the site, including areas that were previously required by BCDC Permits 1977.001.00 and 2008.001.00. The public access improvements would include a widened Bay Trail (from 14 feet to 18 feet), a 3.51-acre park, a replenished beach, a lawn area, a picnic area, and a flexible gravel area. These public spaces would include restrooms, a shower, seating, and bicycle parking. The project will replace and expand a BCDC required overlook, required in BCDC Permit No. M1990.037.01.
- E. **Related BCDC Permits.** The project site is associated with the following BCDC Permits: 1977.001.17 for the Oyster Point Marina and public access improvements; M1990.037.01 for a UPS facility and public access improvements; 1999.008.00 (never constructed) for a hotel parking structure and public improvements; 2008.001.00 for the South San Francisco Water Emergency Transportation Authority ferry terminal and public improvements; and M2017.006.00 for a temporary road during construction.

## **II. Special Conditions**

The amended authorization made herein shall be subject to the following special conditions, in addition to the Standard Conditions contained herein:

### **A. Specific Plans and Plan Review**

1. **Construction Documents.** The improvements authorized herein shall be built generally in conformance with the following documents:

#### **a. Grading**

- (1) The plan set entitled "Oyster Point- Refuse Relocation & Cap Repair Construction Documents," prepared by Wilsey Ham Engineering, Surveying, and Planning, and dated October 10, 2017; and
- (2) The plan set entitled "Oyster Point- Phase IC Streets and Utility Design," prepared by Wilsey Ham Engineering, Surveying, and Planning, and dated October 30, 2017.

No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment. No further plan review of the grading work described in these documents is required unless substantial changes are made. As-built documents should be submitted upon completion of grading to note any changes made.

#### **b. Landscape Plans**

- (1) The plan set entitled "Oyster Point Development Phase IC 100% Design Development Submission," prepared by James Corner Field Operations, and dated September 20, 2017, including minor changes as shown in Exhibits A through E;

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July 30, 2021  
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- (2) The plan page entitled "Oyster Point Development Phase IC Overall Material and Furnishing Plan L-1.00," dated November 17, 2017 and provided to Commission staff on December 4, 2017 in the submittal packet entitled "Attachment M- Oyster Point Restroom Description"; and
- (3) The schematic design set entitled "Oyster Point-Phase 1D, Warm Shell Schematic Design Update," prepared by DGA, and dated July 28, 2017 and the plan set entitled "Oyster Point Ph. 1D BCDC Overlook Analysis," prepared by BKF, and dated March 23, 2018.

**c. Mitigation**

- (1) The plan entitled "Abbreviated Phase IC Mitigation and Monitoring Plan," prepared by SKS and WRA, and provided to the Commission staff and the staff response, both on March 13, 2018.

**d. Amendment No. One**

- (1) The work authorized by Amendment No. One shall be built generally in conformance with the diagram entitled "Project Vicinity Map," and the plans entitled "#1 & #2 Dock Layout," "#1 Set of Docks," and "#2 Set of Docks," prepared by Rick Pelchat and dated March 15, 2020, submitted as part of the application. No further plan review is required for the work authorized by Amendment No. One unless substantial changes are made.

Except as otherwise provided, plan review is required for all landscape and other site development work, including work associated with the plan sets described in II.A.1.b, pursuant to Special Condition II.A.2.

The permittee is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this permit and any legal instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 60 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. A summary list of any changes that have taken place between the approved plans referenced in Special Condition II.A.1 and the final plans submitted for plan review shall be provided with the request for review. If the final construction document review is not completed by or on behalf of the Commission within the 60-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.

- a. **Document Details.** All construction documents shall be labeled with: Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band;

property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas required herein.

- b. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
- c. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.
- d. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission's Design Review Board.
- e. **Construction.** The final plans submitted pursuant to this condition shall generally conform to Exhibits A through E to this permit. Final plans for the construction of the structures authorized herein shall be prepared and submitted for Commission review as described below. No changes to the design of the project shall be made without the prior written approval of the Commission staff.

## **B. Public Access**

### **1. Area**

- a. **Total Public Access Area.** The required public access for this project, including the Marina Waterfront/Beach area and the Parcel 5 Park Area, is comprised of approximately 9.99 acres (435,000 square feet) as follows:
  - Public access in the shoreline band: approximately 138,500 square feet (3.18 acres).
  - Public access out of the shoreline band: approximately 296,500 square feet (6.81 acres).

- b. **Marina Waterfront/Beach.** The approximately 6.48-acre (282,300-square-foot) “Marina Waterfront/Beach” area, not including the 3.51-acre “Parcel 5 Park Area,” along approximately 1,700 linear feet of shoreline, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, parking (within designated parking areas), and related purposes, except as otherwise provided in Special Condition II.B.8. If the permittees wish to use the Marina Waterfront/Beach area for purposes other than public access, it must obtain prior written approval by or on behalf of the Commission.
  - c. **Parcel 5 Park Area.** The approximately 3.51-acre (152,700-square-foot) “Parcel 5 Park Area”, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access, except as otherwise provided in Special Condition II.B.4.b.
  - d. **Other Public Access Areas.** This permit requires two areas that are outside of the total project area described herein. The 12-foot-wide North-South Connector path, as provided in Special Condition II.B.3, and the Phase ID Slough Overlook as provided in Special Condition II.B.11.
- 2. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, except as otherwise provided by this permit, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

  - a. An approximately 3.51-acre “Parcel 5 Park Area,” as described in Special Condition II.B.4;
  - b. Within the Marina Waterfront/Beach Area, an approximately 13,000-square-foot replenished beach with a six-foot-wide accessible path from the paved path to the beach, an accessible beach mat to extend to the water’s edge, an approximately 1,350-square foot wooden deck with seating, and an approximately 200-square-foot public restroom with a shower and changing station (Exhibit B);
  - c. Within the Marina Waterfront/Beach Area, a waterfront park area with an approximately 4,000-square-foot picnic area with six picnic tables and three barbeque areas; an approximately 8,000-square-foot lawn; a 5,750-square-foot decomposed granite area with seating; and a public restroom within a portion of an approximately 1,500 square-foot public/private restroom (Exhibit C);
  - d. Within the Marina Waterfront/Beach Area, an approximately 2,200 foot-long and 18-foot-wide paved path along the shoreline;
  - e. Within the Marina Waterfront/Beach Area, an approximately 10-foot-wide path network between the beach area and the waterfront park area, connecting to the 18-foot-wide path and the adjacent public streets;

**PERMIT NO. 2017.007.02 (AMENDMENT NO. TWO)**  
Kilroy Realty TRS, Inc. and City of South San Francisco

July 30, 2021  
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- f. Adjacent to the Marina Waterfront, a 137-space vehicle parking lot to be used for public shoreline parking and marina parking;
- g. Irrigated planting over the remainder of the 102,700-square-foot public access area as shown in Exhibit A;
- h. Approximately 20 bicycle racks and appropriate lighting throughout the public access areas; and
- i. No fewer than 5 public access signs and, when appropriate, Bay Trail signs, at appropriate trailheads and intersections throughout the site and Water Trail Signs at designated launches.

Such improvements shall be substantially consistent with the plans approved pursuant to Condition II.A.1 of this authorization and generally conform to the plans entitled "Oyster Point Development Phase IC 100% Design Development Submission," dated September 20, 2017, prepared by James Corner Field Operations and the plan review of the subsequent construction documents as required in Special Condition II.A.2.

3. **North-South Connector Path.** ~~Within six months following the completion of site grading, unless an extension of time is granted by amendment of this permit, the permittees, or their assignees, shall construct a temporary 12-foot-wide, accessible "North-South Connector Path" that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the "Parcel 6 Hotel Site," to the southern sidewalk on the newly constructed Marina Boulevard as shown on Exhibit A. A permanent 12-foot-wide paved pathway shall be installed within three (3) years of issuance of the BCDC permit if a City of South San Francisco building permit has not been issued for the construction of the hotel on the "Parcel 6 Hotel Site". If a building permit is issued within three years of issuance of this BCDC permit, an extension of time will be granted by amendment of this permit to allow construction of the hotel and incorporation of a permanent North-South connector path through the hotel site. The final location and design of the permanent path shall be approved by or on behalf of the Commission pursuant to Special Condition II.A. The permanent North-South Connector Path shall be constructed of a durable all-weather, accessible material.~~

- a. **Interim North-South Connector Path.** Within 6 months following the completion of Phase IC, unless an extension of time is granted by amendment of this permit, the permittees, or their assignees, shall construct a 12-foot-wide, accessible "Interim North-South Connector Path" that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the "Parcel 6 Hotel Site," to the southern sidewalk on the newly constructed Marina Boulevard as shown on Exhibit A. The path shall be constructed of a durable, all-weather accessible material.

**b. Permanent North-South Connector Path.** At such time as construction for the "Parcel 6 Hotel Site" commences, the "Interim North-South Connector Path" may be closed. The hotel project shall incorporate a 12 foot-wide "Permanent North-South Connector Path" through the hotel site. The permittees, or their assignees, shall request review and approval on behalf of the Commission for plans for a 12-foot-wide "Permanent North-South Connector Path," which will pass through the hotel site and be approved pursuant to Special Condition II.A. The "Permanent North-South Connector Path" shall be installed and opened to the public upon opening of the hotel, and no later than 36 months following closure of the "Interim North-South Connector Path." The path shall be constructed of a durable, all-weather accessible material.

**4. Parcel 5 Park Area**

- a. Construction.** The Parcel 5 Park Area shall be graded and hydroseeded and maintained as useable open space until a development plan is available. No later than five (5) years after issuance of the BCDC Permit, the permittees shall prepare and submit a development plan for the Parcel 5 Park Area for review and approval by or on behalf of the Commission pursuant to Special Condition II.A. Additional DRB review may be required, at the discretion of the Commission or Commission staff, for development within the Parcel 5 Park Area.

If the permittees wish to use the public access area within the Commission's jurisdiction for a use other than public access purposes, except as provided by Special Condition II.B.4.b., below, the permittees must obtain prior written approval by or on behalf of the Commission, pursuant to Special Conditions II.A and II.B.8.

- b. Commercial Recreation Use.** An approximately 0.5-acre area within the Parcel 5 Park Area may be used for commercial recreation facilities, such as, but not limited to, kiosks or similar structures for a farmer's market, restaurant space of up to 7,500 square feet, and recreational equipment concession facility. The type and location of the commercial recreation uses shall be submitted to the Commission for review and approval pursuant to Special Condition II.A prior to the initiation of any construction for such facilities. The Commission shall not unreasonably withhold or condition approval of such commercial uses, provided that they would not diminish the ability of the public to freely enjoy the remainder of the required public areas.

- 5. Maintenance.** The areas and improvements within the total 9.99-acre (435,000-square-foot) public access area shall be permanently maintained by and at the expense of the permittees or their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt due to a failure to maintain the trees or plant materials; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of

any encroachments into the access areas; maintenance and repairs of damage due to flooding, and ensuring that the public access signs remain in place and visible. Within thirty (30) days after notification by staff of any maintenance deficiency, the permittee shall correct such deficiency or, if such deficiency is of a nature that cannot be feasibly be corrected within thirty (30) days, commence and thereafter pursue to completion correction of such deficiency.

**6. Sea Level Rise and Adaptation**

- a. **Flood Reporting.** If any portion of the public access required herein and described in Special Condition II.B.2 is subject to flooding that results in a closure of any area, the permittee shall submit to the Commission a written report within 30 days after the closure of the public access area. The written report shall include: the date and duration of the public access closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., Bay shoreline overtopping, stormwater backup, or overland flow); the resulting damage and/or cleanup; and representative photographs with site details.
- b. **Adaptation Plan.** By December 31, 2050, or when flooding of the public access areas occurs due to sea level rise and associated storm events, whichever is sooner, the permittees shall prepare and submit a risk assessment for the public access areas required herein, to be approved by or on behalf of the Commission, pursuant to Special Condition II.A.

The risk assessment shall incorporate: (1) the most up-to-date sea level rise guidance from state and federal agencies; (2) an analysis of current water levels; (3) an analysis of landfill subsidence and its contribution to flooding; (4) any observed flooding events as reported in Special Condition II.B.6.a; (5) all types of potential flooding; (6) degrees of uncertainty; (7) preferred adaptation strategies to ensure the viability of the public access to flooding from sea level rise and storms; (8) consequences of defense failure; and (9) a timeline for implementation of shoreline adaptation to protect the required public access areas from flooding.

Upon review and approval of the risk assessment by or on behalf of the Commission, the permittees shall implement, including through any necessary Commission permits or amendments to Commission permits, all approved adaptation strategies within the approved timelines.

No permanent restrictions or closures of required public access areas may take place without additional approval by or on behalf of the Commission. If avoiding permanent closures is infeasible, the permittee shall provide equivalent public access to ensure public access to and along the shoreline in the event of permanent restrictions or closures contingent in part on the Commission's review and approval of such project modifications.

7. **Assignment.** The permittees may transfer maintenance responsibility to a public agency or another party acceptable to the Commission provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
8. **Special Events.** The permittees may conduct temporary non-ticketed and no-fee public special events within the public access area required herein. All equipment, garbage, waste or other event-related items shall be removed from the public access area immediately following the completion of the event.
  - a. **Special Event Plan Review.** Prior to holding a special event as allowed herein, the permittee shall submit a special event plan review request to the Commission's staff a minimum of 30 days prior to the proposed event. The request must include the event date; the event's duration including set up and take-down time, location, purpose; a description of any temporary structures proposed for the event; and an explanation of how the event would impact the public access areas required in Special Condition II.B.1. The special event shall ensure that no paths required by this permit would be closed as part of the event.
  - b. **Five-Year Time Limitation.** The permittee is allowed to conduct special events, as described and restricted herein, for a period of five (5) years total, commencing from the completion of project construction. Within 180 days prior to the expiration of the five-year special events period, the permittee may request an amendment to this permit to extend the duration for holding special events at the project site. Authorization of an extension of special events will be based, in part, on the analysis of the special event plan review required above, the frequency of events held, and the return of the area used for the special event to full public use. In analyzing whether the special event time period may be extended, the Commission may require a change in the type of reporting for a future five year time period. If the permittees have complied with the requirements of Special Condition II.B above, the duration of the authority to conduct special events shall be extended for an additional five (5) years, provided there is continued compliance by the permittees with the requirements of Special Conditions II.B.8.a for subsequent five year periods.
9. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

10. **Windsurfer Launch.** The Phase IIC clay cap work at the windsurfer launch located at the eastern end of the Oyster Point peninsula shall not take place between June 1<sup>st</sup> to August 31<sup>st</sup>, which is the peak windsurfer season. The permittees shall coordinate with the San Francisco Water Trail, the San Francisco Boardsailing Association, and Commission staff to provide appropriate detours, signage plan, and a potential alternative launch location. The launch shall not be closed for a period longer than five months.
  11. **Phase ID Slough Overlook.** Along Gull Drive, an approximately 450-square-foot overlook/seating area site to provide views of the slough along the southern shoreline and the Bay. The overlook shall include a bench, interpretive signage, and one trash container (Exhibit D). The overlook shall be constructed prior to the use of the Phase ID office/R&D complex. The area between the service road and the slough shall be landscaped with low cover plantings. Landscaping along the slough area with planting on the retaining walls for the Phase ID service lane and trees outside of the view shed from the overlook area.
- C. **Phase ID Slough Open Space Dedication.** Prior to the use of the Phase ID office/R&D complex authorized herein, the permittees shall permanently restrict as open space to remain in its current condition with no further filling or development, all portions of the property that the permittees own, leases, or controls within the approximately 68,450-square-foot shoreline area along the slough at the southern and southwest portions of the site as shown on Exhibit A.

The permittees shall comply with this condition by submitting to the Executive Director an instrument that creates such open space restriction and that includes a map that shows all appropriate boundaries, including the shoreline (Mean High Water Line or five feet above Mean Sea Level if marsh is present), and a metes and bounds description of the area being restricted as open space. The instrument shall be in a form suitable for recording in San Mateo County.

The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required open space condition. If the Executive Director approves the instrument, the permittee(s) shall record the instrument on all parcels affected by the instrument within 30 days of its approval and shall thereafter provide the Commission with a copy of the recorded instrument. If the Executive Director disapproves the instrument, the permittee(s) shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and the permittee(s) shall record the approved instrument on all parcels affected by the instrument within 30 days of its approval.

**D. View Corridor**

1. **Visual Access.** The permittees shall leave as open space and undeveloped in perpetuity a 76-foot-wide view corridor located on the along Oyster Point Boulevard as shown on Exhibit E to allow visual access from the public street to the Bay. The permittees shall not construct any structures that would impede views to the Bay within this corridor. The permittees shall landscape the view corridor only with plants or shrubs that do not exceed three feet in height and that have been approved by or on behalf of the Commission pursuant to Special Condition II.A to this permit (Exhibit E).
2. **Maintenance of Planting.** The permittees shall maintain the view corridor. Maintenance shall consist of the regular trimming of shrubs and any plants to prevent their exceeding three feet in height and clearing and replacing of any dead plants.

**E. Marsh Protection**

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at their expense.
2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation, except for the approximately 3,914-square-foot tidal marsh area authorized to be filled pursuant to this permit and restored pursuant to Special Condition II.F. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the permittee shall notify the Commission's staff and prepare a mitigation and monitoring plan detailing remedial actions. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; and (2) carefully removing, storing, and replacing wetland vegetation that has been removed or "peeled back" from construction areas as soon as possible following construction.
3. **Debris Removal.** All construction debris and any uncovered debris, such as concrete, asphalt, wood, plastics, etc., shall be removed from the project site for proper disposal outside of the Commission's jurisdiction, except as authorized in the "Final Closure Plan Oyster Point Landfill," dated September 8, 2017. Excavated debris may be temporarily stored within the Commission's jurisdiction, provided measures are employed to assure that material does not wash or erode into the surrounding marsh or waterways. In the event that any such material is placed in any area within the Commission's jurisdiction for an extended period (i.e. more than 60 days), the

permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

**4. Protection of Special Status Animal Species**

- a. **National Marine Fisheries Service.** The permittee shall construct the project authorized by this permit consistent with the consultation from the National Marine Fisheries Service (WCR-2017-8401), dated March 13, 2018. The permittees shall perform work within the tidal marsh area to repair the clay cap only during low tide.
- b. **U.S. Fish and Wildlife Service.** Prior to the initiation of the clay cap repair work within the tidal marsh, the permittee shall provide the Commission with the final consultation documentation from the U.S. Fish and Wildlife Service. If the consultation documentation results in substantial changes to the project authorized herein, the permittees shall seek and obtain an amendment to this permit.

**5. Upland Transition Zone.** The permittees shall maintain the upland transition zone, coastal meadow area (shoreline planting area as shown on Exhibit A). Maintenance shall include, but not be limited to the removal of any plant materials that die or become unkempt due to a failure to maintain the plant materials and the replacement of such dead plantings.

- F. **Mitigation and Monitoring.** Within six months of the issuance of this permit, the permittees shall submit and obtain approval by or on behalf of the Commission pursuant to the procedure provided for in Special Condition II.A, of the final mitigation and monitoring plan. This plan shall be generally consistent with the Abbreviated Phase IC Mitigation and Monitoring Plan provided to the Commission staff and the staff response, both on March 13, 2018. The plan shall clearly identify the existing site conditions, establish success criteria that match the existing site conditions, and outline monitoring methods. The impacted wetland area shall be restored to equal, or better than, pre-construction conditions, and non-native and invasive species shall represent less than 5% of the total cover of the restored site. The permittees shall monitor the restored area for a period of three years. If the restored site has achieved the required conditions prior to the timeline outlined in the approved Phase IC Mitigation and Monitoring Plan, the permittees may terminate monitoring before the three year period. Annual monitoring reports shall be submitted by December 31<sup>st</sup> of each year.
- G. **Water Quality Certification.** All construction activities in the Bay authorized herein shall comply with the requirements of the water quality certification dated March 13, 2018, issued by the Regional Water Quality Control Board, San Francisco Bay Region, including the restriction of in-water work to low tide events, the requirement to submit a final Mitigation and Monitoring Plan, and the control of invasive non-native plant cover to less than 5% of the total vegetative cover.

H. **Amendment No. One Interim Dock Installation.** The following measures shall be implemented during installation of the interim docks authorized by Amendment No. One. Minor modifications to the below requirements may be approved by the Executive Director upon a finding that they are no less protective of Bay resources.

- a. **Work Window.** In-water work shall only occur between June 1 and November 30 of each year; and
- b. **Dock Encasement.** The interim docks authorized by Amendment No. One may be constructed with pressure treated wood, provided that the docks are wrapped or coated in a benign material to prevent the pressure treated wood from coming into contact with the water. The benign material will be applied to the pressure treated wood prior to constructing the interim floating docks to ensure the entire surface of the pressure treated wood is coated. The effective lifespan of the benign material shall be longer than the length of time the interim docks will be installed for.

### III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Bay Fill.** The Commission may authorize fill when the fill proposed complies with the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that (1) fill "should be authorized only when public benefits from fill clearly exceed public detriment" and "should be limited to water-oriented uses" or for minor fill for improving shoreline appearance or public access to the bay; (2) fill should be approved only when "no alternative upland location" is available; (3) the fill is the "minimum necessary to achieve the purpose"; (4) the "nature, location, and extent of any fill should be such that it will minimize harmful effects to the bay area" including water quality and fertility of fish and wildlife resources; and (5) the fill will "be constructed in accordance with sound safety standards"; (6) the fill will establish a permanent shoreline; and (7) the applicants have valid title to the property where the fill would be placed.
  1. **Public Benefit v. Detriment and Water-Oriented Use.** Approximately 32.1 acres (1,400,000 square feet) of the project consists of a former landfill. Within the project area, the shoreline consists of a sandy beach and tidal marsh. Along the peninsula, outside of the project area, the shoreline consists of riprap rock revetment. In 2001, the Regional Water Quality Control Board issued a Water Board Order No. R2-2000-046 Waste Discharge Requirements for the landfill. Closed landfills are required to have a minimum of four feet of cover, pursuant to the standards for environmental protection of solid waste disposal sites in the California Code of Regulations Title 27. A Final Closure Plan for the Oyster Point Landfill was created on September 8, 2017. To comply with these requirements, the permittees must place approximately 88 cubic yards of clay and soil over an approximately 3,914-square-foot area along the

shoreline to achieve the appropriate four-feet of cover of the clay cap protecting the historic landfill. According to the "Final Closure Plan Former Oyster Point Landfill, Oyster Point Properties- Phase I and II Development 379 Oyster Point Boulevard, South San Francisco, California" (Final Closure Plan), the clay cap protecting the existing landfill is deficient in some locations, with less than four feet of cover due to wave overtopping and ponding along the shoreline. The permittees will install additional cover to fix clay cap deficiencies over other portions of the site outside of the Commission's Bay jurisdiction. The Final Closure Plan states that placement of fill in the Bay to protect the landfill cap would prevent the leaching of chemicals and waste into the Bay, which would harm Bay resources and create a hazard for human use of the Oyster Point Marina. The permittees will place the material over the existing wetland habitat at the shoreline and restore the wetland vegetation to pre-construction conditions. The public detriment in the form of the loss of wetland habitat is temporary. The public benefits to the project include protecting Bay resources from potential contaminants contained in the historic landfill, facilitating use of portions of the site for public access, and restoring wetland at the site.

Additionally, approximately 75 linear feet of an 18-inch-diameter outfall pipe will be removed from the Bay at the beach area. The outfall will not be used at the site by the new development. This removal will not impact surrounding tidal marsh.

Special Condition II.F requires restoration of the area of tidal marsh impacted by the clay cap cover, to ensure the remediation cap remains protected and the public benefits of the fill are achieved. Special Conditions II.E and II.G are included to ensure the project is built consistent with the concurrence from NMFS and the water quality certification from the RWQCB. In addition, Special Condition II.A and II.B are included to ensure the fill is constructed consistent with the McAteer-Petris Act and the San Francisco Bay Plan.

The fill is a shoreline protection project, as the fill will protect the upland clay cap that protects the historic landfill from becoming exposed and releasing contaminants into the Bay. As a result, the fill authorized by this permit constitutes fill for a water-oriented use.

The public benefits of the project authorized by this permit exceed the public detriments of the fill, and therefore are consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

2. **Alternative Upland Location.** The fill is required under state law to resolve deficiencies in the clay cap over the historic landfill. It will only be placed in areas that have been mapped below the required four feet of cover. No alternative upland location is possible for the protection of the existing historic landfill clay cap, consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

3. **Minimum Fill Necessary.** The fill will be placed exclusively within areas that have less than four feet of cover over the landfill. The project has been designed to use the minimum amount of fill necessary to achieve the four feet of cover over the clay cap and to support the replanted wetland vegetation. As a result, the fill authorized by this permit is the minimum amount necessary for the project consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.
4. **Effects on Bay Resources.** In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains related policies, as cited below.
  - a. **Fish and Wildlife.** The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 4 states, in part, that “[t]he Commission should consult with the California Department of Fish and [Wildlife] and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wild-life species... and give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.”

On March 13, 2018, the National Marine Fisheries Service (NMFS) issued a concurrence letter for the proposed project, concluding that the project would not likely adversely affect species protected under the federal Endangered Species Act, including the Central California Coast steelhead and the North American green sturgeon southern species. The concurrence states that the effects of the project are “not expected to result in either a net change to existing habitat values in the action area or result in adverse impacts to designated critical habitat” for project species that occur in this area. NMFS determined that the project will result in increased turbidity, but that this would be minor and temporary. Additionally, NMFS determined that the clay cap work will result in the disturbance of benthic aquatic macroinvertebrates that steelhead and green sturgeon feed upon. However, the area is anticipated to be recolonized quickly following construction. The California Department of Fish and Wildlife provided comments on the timing of the project within the wetland area and stated that because the work would take place during low tide, the work “is unlikely to impact state listed or commercially managed species.”

At the time of issuance of this permit, U.S. Fish and Wildlife Services (USFWS) had not provided a letter of concurrence with the U.S. Army Corp of Engineers determination that the project would not likely adversely impact protected species. USFWS staff communicated to the Commission’s staff that the USFWS did not have concerns about the project, and any recommendations in the letter of concurrence will be consistent with the recommendations of NMFS. Special Condition II.E.4 is included to ensure that the project is constructed in a manner that is consistent with the approval from NMFS. It also requires the permittees to submit the USFWS approval to Commission staff prior to the initiation of the

clay cap repair work in the Bay. As conditioned, the fill authorized by this permit is consistent with the McAtteer-Petris Act requirements and the San Francisco Bay Plan policies related to fish, other aquatic organisms, and wildlife.

- b. **Water Quality.** The Bay Plan policies on Water Quality state, in part, that “Bay water pollution should be prevented to the greatest extent feasible. The Bay’s tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality” and that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan... [and] the policies, recommendations, decision, advice, and authority of the State Water Resources Control Board and Regional Board should be the basis for carrying out the Commission’s water quality responsibilities.” Additionally, the policies state, in part, that “[n]ew projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay...” Lastly, Policy 7 states that, “[w]henver practicable, native vegetation buffer areas should be provided as part of a project to control pollutants from entering the Bay, and vegetation should be substituted for rock riprap, concrete, or other hard surface shoreline and bank erosion control methods...”

On March 16, 2018, the RWQCB issued a water quality certification for the project, including the placement of fill for the clay cap repair work and the removal of an outfall. The fill will impact approximately 3,914 square feet of existing tidal marsh. As mitigation, the RWQCB required the impacted area to be restored to pre-construction conditions and the creation of a Mitigation and Monitoring Plan that would outline the existing site conditions and establish success criteria for the mitigation project. The RWQCB required the site to be controlled for invasive non-native sea lavender such that non-native and invasive plants shall be less than 5% cover of the restored area. Special Condition II.G has been included to ensure that the project is constructed in a manner that is consistent with the water quality certification.

Pursuant to Special Condition II.F, the permittees will restore the tidal marsh on top of the fill required for the clay cap work instead of covering the area with a hard substrate, such as riprap, to avoid erosion. The use of tidal marsh vegetation in place of rock riprap will better absorb pollutants and create a more natural shoreline and provide more effective habitat for fish and wildlife.

As conditioned, the fill authorized by this permit is consistent with the McAtteer-Petris Act requirements and the San Francisco Bay Plan policies related to water quality.

- c. **Tidal Marsh and Tidal Flats and Mitigation.** The Bay Plan policies on Tidal Marshes and Tidal Flats state, in part, that “tidal marshes and tidal flats should be conserved to the fullest possible extent” and that “[p]rojects should be sited

and designed to avoid, or if avoidance is infeasible, minimize adverse impacts on any transition zone presented between tidal and upland habitats. Where a transition zone does not exist and it is feasible and ecologically appropriate, shoreline projects should be designed to provide a transition zone between tidal and upland habitats." The Bay Plan policies on Mitigation state, in part, that "[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required." Furthermore, Policy 7 states, in part, that "a mitigation program should be reviewed and approved by or on behalf of the Commission as part of the project. Where appropriate, the mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) Clear mitigation project goals; (b) Clear and measurable performance standards for evaluating the success of the mitigation project, based on measure of both composition and function, and including the use of reference sites; (c) A monitoring plan designed to identify potential problems early and determine appropriate remedial actions. Monitoring and reporting should be of adequate frequency and duration to measure specific performance standards and to assure long-term success of the stated goals of the mitigation project; (d) A contingency plan...and (e) Provisions for the long-term maintenance, management and protection of the mitigation site..."

The fill will be placed over an approximately 3,914-square-foot area that is the location of existing tidal marsh. Because the fill material is required for the landfill cap to be consistent with state law, it is not possible to avoid impacts to the tidal marsh. To mitigate for the adverse impacts to tidal marsh, the permittees will restore the site to tidal marsh following the placement of fill to protect the landfill cap. Special Condition II.F has been included to require the permittees to restore the impacted tidal marsh area and to submit monitoring reports pursuant to a plan approved by or on behalf of the Commission. The "Oyster Point Development Phase 1C, Abbreviated Mitigation Monitoring Plan," outlines that the area will be restored to pre-construction conditions and the area will be monitored for three years. Special Condition II.E has been included to ensure that the work adjacent to the wetland areas does not negatively impact wetland vegetation. Following permit issuance, a complete mitigation and monitoring plan will be developed analyzing the pre-construction conditions of the tidal marsh, performance standards, site maintenance, and monitoring techniques. The RWQCB required that the restored area limit the amount of cover by non-native sea lavender and other non-native or invasive species, resulting in a higher quality marsh habitat than exists today. Additionally, the larger project

will provide a transition zone in the uplands for the marsh along the northern shoreline of the peninsula to migrate as sea levels rise. As a result, there will be no permanent adverse impacts to tidal marsh from the placement of fill.

As conditioned, the fill authorized by this permit is consistent with the McAteer-Petris Act requirements and the San Francisco Bay Plan policies related to mitigation and tidal marsh and tidal flats.

5. **Safety Standards.** In addition to Section 66605(e) of the McAteer-Petris Act regarding the seismic and flooding standards by which fill is designed and constructed, the Bay Plan contains related policies, cited below. The Bay Plan policies on Shoreline Protection state, in part, that “[n]ew shoreline protection projects and the maintenance or reconstruction of existing projects and uses should be authorized if: (a) the project is necessary to provide flood or erosion protection for (i) existing development, use or infrastructure, or (ii) proposed development, use or infrastructure that is consistent with other Bay Plan policies; (b) the type of the protective structure is appropriate for the project site, the uses to be protect, and the erosion and flooding conditions at the site; (c) the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account; (d) the project is properly designed and construct to prevent significant impediments to physical and visual public access; and (e) the protection is integrated with current or planned adjacent shoreline project measures...” Furthermore, Policy 4 states that “[w]henver feasible and appropriate, shoreline protection projects should include provisions for non-structural methods such as marsh vegetation and integrate shoreline protection and Bay ecosystem enhancement, using adaptive management. Along shorelines that support marsh vegetation, or where marsh establishment has a reasonable chance of success, the Commission should require that the design of authorized protection projects include provisions for establishing marsh and transitional upland vegetation as part of the protective structure, wherever feasible.”

Further, the Bay Plan Climate Change Policy No. 2 states, in part: “When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end-of-century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices.” Climate Change Policy No. 3 state, in part, “[t]o protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects...should be designed to be resilient to a mid-century

sea level rise projection.” Climate Change Policy No. 7 states, in part, that until a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-by-case basis to determine the project’s public benefits, resilience to flooding, and capacity to adapt to climate change impacts. The following specific types of projects have regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding... [including] a public park.”

The fill is necessary to raise the areas with deficient landfill cover areas to be consistent with Title 27 and RWQCB Order No. R2-2000-046. The covering of the capped areas with marsh vegetation will prevent further loss of landfill cap cover and will provide protection through a mid-century projection of sea level rise of 24-inches at a minimum. The fill is anticipated to last through the end of the century. The restored tidal marsh will connect into the surrounding marsh and will create a natural shoreline. The project will provide transitional marsh plantings in the upland areas, however the RWQCB expressed concerns about the elevation change and the ability of the marsh to migrate landward as sea levels rise. Special Condition II.E.5 has been included to ensure that the transition zone is maintained and promotes a healthy marsh.

The fill is resilient to flooding from sea level rise and storms through the end-of-century. In addition, the fill associated with the project supports development of Oyster Point, including the construction of an enhanced public access area along the shoreline. This project will achieve regional goals and provide regional benefits by enhancing public access to the Bay and improving water access at a former landfill.

As a result, the project is consistent with the requirements of the McAteer-Petris Act and with the Bay Plan policies on Shoreline Protection and Climate Change.

6. **Valid Title.** The project site is owned by Oyster Point Development, LLC., and the City of South San Francisco.

As conditioned, the project is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan policies on fill.

- B. **Priority Use Area.** The project site is located within an area designated for Waterfront Park, Beach Priority Use in the Bay Plan Map No. 5 which provide that projects in this area should “Preserve and improve marina and shoreline park. Preserve picnicking, swimming, boating, hiking, windsurfing, and fishing opportunities. Possible ferry terminal. Allow if compatible with park and marina uses; serve with bus public transit to reduce traffic and parking needs. Some fill may be needed. Provide signage regarding fish consumption advisories for anglers.”

On September 16, 1999, the Commission adopted Bay Plan Amendment No. 2-99 and Resolution No. 99-06 to amend the San Francisco Bay Plan and Resolution 16 to delete approximately 37 acres from the waterfront park, beach priority use area designation on Plan Map 5. The remaining priority use area is 28.41 acres. The majority of the deletion

was in the upland areas, but an approximately 0.5-acre area at the western end of the drainage channel (slough) located along the southern shoreline of the Oyster Point peninsula was also removed from the priority use area designation.

The area is subject to several existing BCDC permits. BCDC Permit No. 2008.001.00 authorized a Water Emergency Transportation Authority (WETA) ferry terminal. BCDC Permit No. 1977.001.17 requires the majority of waterfront park, beach priority use area for public access. Permit No. 1977.001.17 also requires a fishing pier on the eastern portion of the peninsula, which will not be changed as part of this project. The project will maintain, improve, and expand the existing public amenities required by the existing BCDC permits within the waterfront park, beach priority use area. Where public access areas are more specifically described in this permit, the required public access areas in BCDC Permit No. 1977.001.17 shall be superseded by this permit.

As part of the effort to fix landfill cap deficiencies, clay cap work will take place at the eastern corner of the peninsula within the Phase IIC area. However, the majority of work within Phase IIC is not designed at the time of issuance of this permit and will be subject to a future application and review by the Commission. The landfill clay cap work within the uplands in the Phase IIC area will involve the temporary closure of a portion of the Bay Trail and the windsurfer launch. Additional stairs will be added to the launch to conform to the new grading elevations from the clay cap work. Detour routes and timing of construction will be coordinated with the Commission and the San Francisco Boardsailing Association. Pursuant to Special Condition II.B.10, the project applicants will work with the San Francisco Bay Water Trail (Water Trail) and the San Francisco Board Sailing Association to ensure the new design meets the needs of the users. The construction at this location will take place during the windsurfing and kite surfing off seasons.

The peninsula was subdivided in the Fall of 2017, prior to the issuance of this permit. The subdivision created six new parcels and one remainder parcel. The subdivision removed the priority use area along the southern shoreline from the Parcel 5 Park Area and included this area in the remainder parcel instead. The subdivision of land is allowed pursuant to Regulation Section 10601(b)(6) and is a minor repair or improvement that requires a BCDC permit. Special Condition II.B requires the new parcel 5 as public access to mitigate for the fact that the priority use area on this portion of the peninsula will have inaccessible grading. As conditioned, the project is consistent with the Bay Plan Waterfront Park, Beach priority use designation.

- C. **Public Access; Recreation; and Views.** In assessing whether the project provides maximum feasible public access consistent with the proposed activities, the Commission has relied on the McAteer-Petris Act, the Bay Plan policies, and access requirements of similar previously permitted projects.
1. **Public Access Policies.** Section 66602 of the McAteer-Petris Act states, in part, that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Section 66632.4 states, "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of a water-oriented priority land uses...

the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.”

The Bay Plan **Public Access** policies state, in part, that projects “should increase public access to the Bay to the maximum extent feasible” and that “...maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline...” Further, the policies state, in part, that “[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available” that “diverse and interesting public access experiences should be provided.” Additionally, the policies state, in part, that public access “should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Additionally, the policies provide that “[p]ublic access should be sited, designed, managed, and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding,” and that access should be designed consistent with the physical and natural environment. The policies also state, in part, that “[r]oads near the edge of the water should be designed as scenic parkways for slow-moving, principally recreational traffic. The road-way and right-of-way design should maintain and enhance visual access for the traveler, discourage through traffic, and provide for safe, separated, and improved physical access to and along the shore.” The policies state that “[p]ublic access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Further, the policies state, in part, that “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby” and that “[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Recreation** policies state, in part, that “[d]iverse and accessible water-oriented recreational facilities, such as marinas, launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population... and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels...waterfront parks should be provided wherever possible.”

Recreation Policy 2 states, in part, that: “Waterfront land needed for parks and beaches to meet future needs should be reserved now.... [however] recreational facilities need not be built all at once; their development can proceed over time. Interim use of a waterfront park priority use area prior to its development as a park

should be permitted, unless the use would prevent the site from being converted to park use or would involve investment in improvements that would preclude the future use of the site as a park.”

Recreation Policy 3 states, in part: “Recreational facilities, such as waterfront parks, trails, marinas...non-motorized small boat access, fishing piers, launching lanes, and beaches, should be encouraged and allowed by the Commission, provided they are located, improved and managed consistent with the following standards [including]...[d]ifferent types of compatible public and commercial recreation facilities should be clustered to the extent feasible to permit joint use of ancillary facilities and provide a greater range of choices for users; [s]ites, features or facilities within designated waterfront parks that provide optimal conditions for specific water-oriented recreational uses should be preserved and, where appropriate, enhanced for those uses, consistent with natural and cultural resource preservation; [a]ccess to marinas, launch ramps, beaches, fishing piers, and other recreational facilities should be clearly posted with signs and easily available from parking reserved for the public or from public streets or trails; [t]o reduce the human health risk posed by consumption of contaminated fish, projects that create or improve fishing access to the Bay at water-oriented recreational facilities, such as fishing piers, beaches, and marinas, should include signage that informs the public of consumption advisories for the species of Bay fish that have been identified as having potentially unsafe levels of contaminants”; “[and c]omplete segments of the Bay...Trails where appropriate.”

Further, Recreation Policy 3 provides, regarding non-motorized boats that “[w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks” and that “access point should be located, improved and managed to avoid significant adverse affects on wildlife and their habitats.” To enhance this use, such areas should include “...launching facilities, restrooms, rigging areas, equipment storage.... [and] be accessible...to ensure that boaters can easily launch their watercraft.” And, moreover, the policies provide in part that “[s]andy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection.”

Additionally, the Recreation policies state that waterfront parks “should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities” and that “[p]ublic parking should be provided in a manner that does not diminish the park-like character of the site.” Also, on water oriented commercial-recreation, the policies state partly that “[w]ater-oriented commercial recreational establishments, such as restaurants... recreational equipment concessions...should be encouraged in urban areas adjacent to the Bay. Public docks, floats or moorages for visiting boaters should be encouraged at these establishments where adequate shoreline facilities can be provided.”

The Bay Plan Recreation policies pertaining specifically to designated waterfront park areas state, in part: "To assure optimum use of the Bay for recreation, the following facilities should be encouraged in waterfront parks...." The policies pertaining to waterfront park areas include the following: "(2) To capitalize on the attractiveness of their bayfront location, parks should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities. Recreational facilities that do not need a waterfront location, e.g., golf courses and playing fields, should generally be placed inland, but may be permitted in shoreline areas if they are part of a park complex that is primarily devoted to water-oriented uses, or are designed to provide for passive use and enjoyment of the Bay when not being used for sports... (4) Public launching facilities for a variety of boats and other water-oriented recreational craft, such as kayaks, canoes and sailboards, should be provided in waterfront parks where feasible. (5) Except as may be approved pursuant to recreation policy 4-b, limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development may be appropriate (at the option of the park agency responsible) in all parks shown on the Plan maps except where there is a specific note to the contrary. (6) Trails that can be used as components of the San Francisco Bay Trail...or links between them should be developed in waterfront parks. San Francisco Bay Trail segments should be located near the shoreline unless that alignment would have significant adverse effects on Bay resources; in this case, an alignment as near to the shore as possible, consistent with Bay resource protection, should be provided... (7) Bus stops, kiosks and other facilities to accommodate public transit should be provided in waterfront parks to the maximum extent feasible. Public parking should be provided in a manner that does not diminish the park-like character of the site. Traffic demand management strategies and alternative transportation systems should be developed where appropriate to minimize the need for large parking lots and to ensure parking for recreation uses is sufficient. (8) Interpretive information describing natural, historical and cultural resources should be provided in waterfront parks where feasible... (10) The Commission may permit the placement of public utilities and services, such as underground sewer lines and power cables, in recreational facilities provided they would be unobtrusive, would not permanently disrupt use of the site for recreation, and would not detract from the visual character of the site.

The Bay Plan **Transportation** Policy 4 states, in part, that "[t]ransportation projects on the Bay Shoreline... should include pedestrian and bicycle pathways... Transportation projects should be designed to maintain and enhance visual and physical access to the Bay and along the Bay shoreline."

The Bay Plan policies on **Appearance, Design, and Scenic Views** state, in part, that “all Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay” and that “[m]aximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas...” Furthermore, “[s]tructures and facilities that do not take advantage or complement the Bay should be located and designed so as not to impact visually on the shoreline. In particular, parking areas should be located away from the shoreline.”

2. **Maximum Feasible Public Access.** Approximately 9.97 acres of public park area existed at the site prior to the authorized project. BCDC Permit 1977.001.17 for the Oyster Point Marina requires a trail around the perimeter of the peninsula and the entire area at the peninsula to be open to the public. Where public access areas are more specifically described in this permit, the required public access areas in BCDC Permit No. 1977.001.17 shall be superseded by this permit. The permit also authorized the construction of a fishing pier and a public boat launch at the eastern end of the peninsula (outside of the authorized project area). BCDC Permit No. 2008.001.00 authorized a WETA ferry terminal and requires public access along a portion of the ferry pier, a viewing platform, and an approximately 565-foot-long north-south pathway. BCDC Permit No. M1990.037.01 authorized a UPS maintenance facility south of the project site and requires a sidewalk along Gull Drive and an overlook at the western end of the slough. City of South San Francisco staff estimates that approximately 300 people use the public access areas at the peninsula on a daily basis under the pre-project conditions, to access the Bay Trail, marina, ferry terminal, beach and other amenities.

The project will result in approximately 9.99 acres of enhanced public access. Approximately 6.81-acres of the public access will be located outside of the Commission’s jurisdiction. Approximately 3.18-acres of public access will be located within the Commission’s 100-foot shoreline band. The access consists of an approximately 6.48-acre shoreline park as part of Phase IC known as the Marina Waterfront/Beach area; a 3.51-acre Parcel 5 Park area that will be programmed at a later date but which could include some commercial recreation and restaurant uses on up to 0.5 acres of the 3.51 acre parcel; and an approximately 450-square-foot overlook at the western edge of the slough south of the project site as part of Phase ID. Special Condition II.B requires these areas for public access and requires the permittees to maintain these areas.

The Phase ID building will support approximately 950 employees. The future hotel site, located outside of the Commission’s jurisdiction, will have approximately 350 rooms and additional employees to support the hotel. The anticipated number of daily users of the waterfront park area following project construction is 795 people, including use by people who work at the site and hotel guests. Additionally, Phases IID-IVD are anticipated to be office/R&D complexes and will support 3,180 employees. Special Condition II.B.4 requires the Parcel 5 Park Area, outside of the Commission’s jurisdiction, to be available for public access to accommodate the increased number of visitors to the shoreline.

Approximately 2,200 linear feet of Bay Trail will be widened from 14 feet to 18 feet and would extend along the Marina Waterfront area, connecting to the existing path at the northern peninsula and to the adjacent public access areas associated with the Ferry Terminal development. The Bay Trail will be paved and will include foot level lighting. The permittees shall maintain the trail and ensure that it appropriately connects to adjacent Bay Trail segments, as described in Special Condition II.B.

The Marina Waterfront/Beach area will include approximately 2.36 acres in planting, including bioretention areas, that will not be used for active public use. These plantings are necessary for filtration of storm runoff. Due to grading and planting, only approximately 4.12 acres of the park area will be usable by the public. A network of 10-foot-wide trails will connect the Marina Waterfront area to Oyster Point Boulevard and Marina Boulevard.

Special Condition II.B. requires the approximately 13,000-square-foot beach within the Marina Waterfront Area to be replenished, and the permittees will construct a six-foot-wide accessible path and beach mats, for universal access to the water, extending from the Bay Trail to the beach. This will facilitate access to the water, as required in the Recreation policies discussing waterfront parks. An eight-foot-wide, 1,350-square-foot wooden deck with seating will sit adjacent to the Bay Trail and overlook the beach and the marina. A 200-square-foot restroom with a changing station and a shower will be constructed west of the Bay Trail. A drop-off area will be provided on Oyster Point Boulevard for beach users, such as picnickers and kayakers, to unload items at a location closer than the public parking. An approximately 1,500-square-foot pump station will be located between the Bay Trail and Oyster Point Boulevard and would be screened by a fence and landscaping.

The Marina Waterfront Park area, as required in Special Condition II.B, will include an 8,000-square-foot lawn area; a 4,000-square-foot picnic area with six picnic tables and three barbeque pits; a 5,750-square-foot multi-use gravel area; and a 1.09-acre parking lot for approximately 137 vehicles. The park will include three seating areas with benches, lounge chairs, and picnic tables. The parking lot will be open for public use and would serve both the public access areas and the marina. The Phase ID office/R&D complex will have its own private parking. The multi-use gravel area will include seating and is proposed for special events, such as farmers markets and food trucks. Special Condition II.B.8 requires the permittees to submit a plan review request for any special event a minimum of 30 days prior to the event to ensure that these irregular uses of the site do not inhibit the public nature and use of the required public access areas. An approximately 1,500-square-foot restroom with a portion available to the public and a portion that will be for private use for the marina will be constructed on the western portion of the Marina Waterfront Park. An additional approximately 750-square-foot private restroom will be installed at the eastern end of the park. The private restrooms will serve the marina and would replace the existing private restrooms at the site. Approximately 20 bicycle racks will be installed between the beach area and the Marina Waterfront.

The approximately 3.51-acre Parcel 5 Park area will be located south of Marina Boulevard, between the Phase ID building and a parcel proposed for a future hotel development (Parcel 6 Hotel Site), and outside of the Commission's jurisdiction. The hotel development will not be located within the Commission's jurisdiction and will not be subject to a future Commission permit application. Special Condition II.B requires the Parcel 5 Park Area for public access even though it is outside of the Commission's jurisdiction to ensure the project provides maximum feasible public access consistent with the project. The site already has required public access under existing BCDC permits, described above. Additionally, the enhanced shoreline park (Marina Waterfront Park) includes approximately 2.36 acres of landscaped areas that are not designed for public use, limiting the useable amount of space for the public within the 6.48-acre park. The project will result in a large increase in visitors to the shoreline associated with the office/R&D and hotel developments. As a result, additional useable public access areas are necessary to provide maximum feasible public access. The enhanced public access areas along the shoreline, along with the Parcel 5 Park Area are designed to accommodate the increased activity along the shoreline. The Parcel 5 Park Area and the Marina Waterfront park will greatly enhance the public access experience at the Oyster Point peninsula, providing maximum feasible public access consistent with the project.

A crosswalk will be installed on Marina Boulevard to provide for access from the public parking lot to the Parcel 5 Park Area. As provided in Special Condition II.B.4.a, the park will not be programmed until five years after the issuance of this permit for the Phase IC and ID developments to allow the design of the park to compliment the adjacent hotel and for the City to complete a public review process. In the interim, as required by Special Condition II.B.4.a, the park area will be graded, hydro-seeded, and maintained, including irrigation, as useable public open space. The park will include an approximately 11,900-square-foot temporary parking lot, which will be re-assessed and potentially removed when the park is designed.

Special Condition II.B.4.b allows for an approximately 0.5-acre portion of the Parcel 5 Park area to be used for limited commercial use, including the construction of commercial structures. These uses are anticipated to include the installation of facilities for farmers markets, a restaurant space of up to 7,500 square feet, and recreational equipment concession facilities. The 0.5-acre area has yet to be designed, and commercial recreational areas could be located in more than one location, so long as the total area of commercial recreation is consistent with this permit. These commercial recreational uses activate the Parcel 5 Park Area and will enhance the experience of the public. The exact type and location of these uses and structures will require further review and approval by or on behalf of the Commission, as required in Special Condition II.B.4.b. The Commission staff may reasonably consider an enlargement of the 0.5-acre commercial recreation use area through an amendment to this permit to accommodate planning of the commercial recreation area and the Parcel 5 Park area, taking into consideration the context of the design of Parcel 5 Park and public use of the area.

The City of South San Francisco will host special events in the Parcel 5 Park Area and the multi-use gravel area within the Marina Waterfront Park. These events could impact the public's use of the shoreline within the 100-foot shoreline band by excluding the public from the special events areas and crowding the public access areas adjacent to the special events, thereby inhibiting circulation to and along the shoreline. Special Condition II.B.8 limits these events to non-ticketed and no-fee public events to allow this use to be consistent with the park like nature of these sites. To ensure that the majority of the public access remains useable during these special events, Special Condition II.B.8.a requires plan review and approval of each event before they may commence. The permittees must ensure that all pathways within the public access areas remain open to ensure that the public can move throughout the site. Special Condition II.B.8.b puts a five-year time limit for special events to be held. This time period can be extended in the future. If the permittees request for this time period to be extended by or on behalf of the Commission, Commission staff will analyze the plan review requests for each event, required in Special Condition II.B.8.a and how the public access areas have functioned under these events. If more than 15 events are held each year, Special Condition II.B.8 may be amended to require the submittal of annual reports providing a schedule for the upcoming years events and describing the prior year's special events, including details on each event, the number of participants, and any complaints received from the public.

Special Condition II.B.3 requires a North-South connector path to be constructed through the site of the proposed hotel outside of the Commission's jurisdiction (Parcel 6 Hotel Site) connecting Marina Boulevard to the pedestrian bridge that crosses the slough along the southern shoreline. A temporary 12-foot-wide path will be installed within 6 months of the completion of grading. The temporary path is necessary to allow access across the site, connecting the various public access areas. Without it, the public would not be able to easily move from the Marina Waterfront Park area to the pedestrian bridge and Bay Trail. A permanent 12-foot-wide paved path will be installed within three (3) years after issuance of the Commission's approval if the construction of the proposed hotel has not commenced. If a building permit for the construction of the hotel will be issued by the City of South San Francisco soon after the 6 month mark, following the substantial completion of site grading, the permittees may seek a time extension for the requirement to provide the north-south connector path. In this case, no temporary path would be needed. If the construction of the proposed hotel has begun, the permanent trail will be incorporated into the design of the hotel. Special Condition II.B.3. requires the permittees to submit plans for the design and alignment of the permanent path for approval by or on behalf of the Commission.

Special Condition II.B.2 requires the installation of an approximately 450-square-foot overlook south of the Phase ID building along Gull Drive at the terminus of the slough located to the south of the project site. The requirement of this overlook will replace, and supersede the permit requirement for, an approximately 100-square-foot slough overlook that is required under BCDC Permit No. M1990.037.01. The

overlook will include a bench and a trash receptacle. Special Condition II.C requires the dedication of an approximately 68,450-square-foot area extending from the Phase ID service road, across the slough to the edge of the applicant's property as open space.

Approximately 400 linear feet of the new alignment of Marina Boulevard will be located within the Commission's jurisdiction. The road will be elevated to preserve views north toward the marina. At the apex of the road, it will be possible to view the Bay eastward. Crosswalks will be added across Marina Boulevard to allow people to move between the public access areas. Special Condition II.A has been included to ensure that the road is constructed in a manner that is consistent with the approved plans. Special Condition II.D requires a view corridor along a portion of Oyster Point Boulevard Gateway, through the intersection with Marina Boulevard and Oyster Point Boulevard to preserve views through this portion of the Marina Waterfront/Beach park to the Bay. As conditioned, the project is consistent with the Bay Plan policies on transportation and views.

The design of the project was adapted following initial communication with the Commission staff in November, 2016. Originally, more of the Marina Waterfront park area was proposed as parking, consistent with the pre-construction conditions. The project will provide more active uses of the site and is designed to provide more connectivity by improving pathways between areas.

3. **Sea Level Rise and Flooding.** According to the Federal Emergency Management Agency (FEMA), the current (2015) 100-year flood elevation for the project site is 11 feet (NAVD88). Portions of the site flood during "King Tide Events" and storms under pre-project conditions. The Phase ID office/R&D building complex has a design life of approximately 80-100 years.

The Marina Waterfront area will be generally located at an elevation of 14.8 feet (NAVD88). This area has a design life of approximately 50-years and will be resilient through 2050 with 24 inches of sea level rise. This area is anticipated to be flooded by a 25-year storm event, which has a 4% chance of occurring, at the end of the century with 66-inches of sea level rise. The shoreline bayward of the Bay Trail along this area will be planted with a "coastal meadow" plant mix that will provide a transitional zone for the salt marsh to migrate upward as sea levels rise. Special Condition II.B.6 requires the permittees to submit an adaptation plan for the required public access areas by December 31, 2050 or when flooding of the public access areas occurs due to sea level rise and associated storm events, whichever occurs first. This is anticipated to occur when the mean higher high water level is 10.63 feet (NAVD88), which is when the areas are predicted to be flooded during a 100-year storm event with 46.8 inches (3.9 feet) of sea level rise, which would occur before the end of the century. According to the State of California Sea Level Rise Guidance 2018 Update, this would occur between 2070 and 2080 under the high emissions scenario. The adaptation plan will include adaptation strategies that are appropriate for the site in the future. This allows time for a preferred adaptation design to be selected and be implemented before the public access areas are

regularly flooded. Special Condition II.B.6 also requires the permittees to provide a notice of flooding whenever flooding results in the closure of any public access area. These notices will provide an understanding of how frequently the public access is inaccessible due to flooding and will provide insight on which areas need to be adapted and how soon. Special Condition II.B.5 requires the permittees to repair any damages to the public access areas caused by flooding.

The replenished beach area will be approximately 52 feet wide and would have an elevation between 6.2 to 13 feet (NAVD88). The beach has a design life of approximately 50 years and will be flooded by mid-century during a 100-year flood event with 24 inches of sea level rise. On a regular basis, the lower portions of the beach will be frequently flooded by 2050, and unavailable for public use. The beach will be fully inundated by the end of the century with 66 inches of sea level rise. Because the beach is designed to provide a smooth connection to the water, it will be difficult for the beach to be resilient. The upland area is a steep slope, so adaptation of the beach area is limited. While staff has encouraged the permittees to adapt the beach area by further replenishing it, it is not required under Special Condition II.B.6.

The Parcel 5 Park area, North-South connector path, and the Phase ID slough overlook will all be elevated to be resilient to a 100-year flood event at the end of century with a projection of 66-inches of sea level rise.

As conditioned, the public access required by this permit is viable to impacts from flooding due to sea level rise or storms.

4. **Design Review Board.** The project was reviewed by the Commission's Design Review Board (DRB) on July 10, 2017. At this meeting, the DRB raised questions about the type of landscaping and safety at the site. The DRB commented on the need to better connect the public spaces across Marina Boulevard, from the southern shoreline to the Marina Waterfront. Additionally, the DRB discussed the desire for an east-west connection along the slough from the Parcel 5 Park area to Gull Drive. Lastly, the DRB expressed concerns about whether the appropriate soils brought to the site would support the proposed landscaping.

In response to these concerns, the permittees added a crosswalk from the public parking lot to the Parcel 5 Park area. While the Phase ID service road along the slough has been widened, the permittees are not providing access along the slough from the Parcel 5 Park area to Gull Drive. They state that the steep slopes along the slough require retaining walls, making it too difficult to achieve an accessible grade and seismic stability due to the landfill materials.

5. **Comparable Projects.** The Commission considers its previous actions on comparable projects to help inform a decision about whether the proposed public access improvements represent the maximum feasible scope and type consistent with the mixed-use project.

The project will provide approximately 9.99 acres of public access, with approximately 3.18 acres located within the Commission's jurisdiction. Public access areas will occupy approximately 28% of the total project site and approximately 42% of the project area within the 100-foot shoreline band.

The Commission has, in the past, considered comparable projects that dedicated similar portions of the total project site to public access (Table 1). The Sierra Point five-building office complex in the City of Brisbane, San Mateo County (BCDC Permit No. M2008.019.00) provided approximately 3.7 acres of public access on the undeveloped 22.3-acre project site. The public access is located entirely within the Commission's 100-foot shoreline band and is approximately 16% of the project site. The Burlingame Office Park project in the City of Burlingame, in San Mateo County (BCDC Permit No. 2013.001.01), originally issued on November 24, 2014, and amended through October 18, 2017 was for a six-building office complex and provided approximately 3.7-acres of public access on an approximately 20-acre site, which is 19% of the project site. A public access path previously existed on the site before the project was constructed. The Bay Park Plaza, a two-building office complex, in the City of Burlingame, in San Mateo County (BCDC Permit No. 1982.020.08), originally issued on January 21, 1983, and amended through October 22, 2007, provided approximately 2.93-acres of public access on an approximately 12.7-acre project site. Public access is approximately 23% of the project site and the vast majority is located within the Commission's 100-foot shoreline band. The Wind River five building office complex project in the City and County of Alameda (BCDC Permit No. 1997.009.01), originally issued on November 20, 1997, and amended through November 12, 1998 provided approximately 4.35 acres of public access on an approximately 13-acre site, which is approximately 34% of the project site. There was no public access at the site of the Wind River project prior to the construction of the project. The single-building office complex project at 501 Airport Boulevard in the City of Burlingame in San Mateo County (BCDC Permit No. 1980.003.00), issued on April 28, 1980, provided approximately 0.18-acres of public access on the approximately 0.5-acre site, equaling approximately 36% of the total project site.

**Table 1: Public Access Provided in Comparable BCDC Approved Office Complex Projects**

| Permit                                 | Total Project Size<br>(On Land; Acres) | Size of Public<br>Access (Acres) | Public Access as a<br>Percentage of Total<br>Project | Type of Use                              |
|----------------------------------------|----------------------------------------|----------------------------------|------------------------------------------------------|------------------------------------------|
| M2008.019.02                           | 22.8                                   | 3.7                              | 16%                                                  | Five Building Office<br>Complex          |
| 2013.001.01                            | 20                                     | 3.7                              | 19%                                                  | Six Building Office<br>Complex           |
| 1982.020.08                            | 12.7                                   | 2.93                             | 23%                                                  | Two Building Office<br>Complex           |
| 1997.009.01                            | 13                                     | 4.35                             | 34%                                                  | Five Building Office<br>Complex          |
| 1980.003.00                            | 0.5                                    | 0.18                             | 36%                                                  | Single Building<br>Office Complex        |
| <b>Application<br/>No. 2017.007.00</b> | <b>35.3</b>                            | <b>9.99</b>                      | <b>28%</b>                                           | <b>Three Building<br/>Office Complex</b> |

The project differs from other previously-approved office park developments, as it includes a potential future hotel development. In addition, the public access improvements include improving existing BCDC-required public access. However, compared to other similar developments, the project provides a comparable portion of the site for public access. In addition to the quantity of access provided, the qualitative improvements to existing public access were considered in assessing whether the project provides maximum feasible public access.

As conditioned, the project authorized herein is consistent with the McAteer-Petris sections and relevant San Francisco Bay Plan policies regarding Public Access, Recreation, Transportation, and Appearance, Design, and Scenic Views.

#### **D. Commission Advisory Boards**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not review the project because Commission staff determined that the fill proposed does not raise seismic safety issues.
2. **Design Review Board.** The project was reviewed by the Commission's Design Review Board on July 10, 2017.

#### **E. Environmental Review.**

1. **Original Permit.** On March 23, 2011, the City of South San Francisco, acting as lead agency, certified the final Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for the Oyster Point Specific Plan. This document reviewed Phases IC and ID on a project level and Phases IIC, IID, IIID, and IVD on a programmatic level. The review of these subsequent phases will be the subject of a future permit application for the Commission's approval.

On December 11, 2017, the City of South San Francisco circulated a subsequent EIR to analyze changes to the design of Phases IID, IIID, and IVD. These are future phases that are not part of the proposed project but will connect to the proposed project. The three phases were planned to provide approximately 1,750,000 square feet of office/R&D space. The updated proposal is for Phase IID to include approximately 1,070,000 square feet of office/R&D space. Phases IIID and IVD would change the zoning in these locations from office/R&D to residential and retail/amenity. These phases would include approximately 1,191 residential units and 22,000 square feet of flexible use retain and/or amenity space.

The review of these phases will be the subject of a future permit application for the Commission's approval. However, the request for the re-entitlement of these phases has been put on hold at the request of OPD.

#### **F. Amendments**

- ~~21~~ **Amendment No. One.** The project authorized in Amendment No. One includes the installation of two interim floating docks at the West Basin of Oyster Point Marina, the first approximately 1,040 square feet and the second approximately 1,120 square feet, to connect Docks 2 to 3 and 4 to 5, respectively, for approximately one year while the Bay Trail improvements authorized in this permit are completed. In

total, the project will result in the placement of 2,160 square feet of fill in the Bay for approximately one year. While the interim floating docks are being used, the Marina gates to Docks 1-4 will be closed to tenants. The interim docks have been designed to be the minimum amount of fill necessary with no alternative upland location to provide the public with safe interim access to the Marina's existing docks while the public benefits from the new Bay Trail are constructed. Special Condition II.A.1.d has been included to ensure the work is conducted generally in accordance with the plans submitted and with the application for Amendment No. One. In addition, Special Condition II.H has been included to ensure that the installation and construction of the interim docks is protective of Bay resources, including that the docks' pressure treated wood must be encased in a benign material, consistent with recommendations from the California Department of Fish and Wildlife. The project authorized by Amendment No. One to this permit involves less than 20,000 square feet of expansion of boat docking facilities within an existing marina, which as defined in Regulation Section 10601(a)(1), is a "minor repair or improvement," for which the Executive Director may issue an amendment to an existing permit, pursuant to Government Code Section 66632(f) and Regulation Section 10822.

In sum, as conditioned, the project authorized by Amendment No. One is consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that it will not adversely affect the Bay or public access to or enjoyment of the Bay.

2. **Amendment No. Two.** Amendment No. Two modifies the requirements of Special Condition II.B.3 ("North-South Connector Path") at the request of the permittees and in response to substantiated construction delays. Special Condition II.B. 3 has been modified to require the installation of an Interim North-South Connector path between the southern shoreline and Marina Boulevard to be completed within six months following the completion of Phase IC of the project. The new Interim North-South Connector path completion date is a time extension from the initial completion date, which was within six-months following the completion of site grading. The interim connector path is intended to be replaced by a permanent path that will be integrated into the design of a hotel at Parcel 6. The modified condition allows for the interim path to be closed to allow for construction of the hotel, and for the replacement permanent path to open to the public upon opening of the hotel, and no later than 36 months following closure of the interim path. Both paths are to be constructed of a durable, all weather accessible material. Because the modifications to the permit terms do not materially alter the project authorized herein, and the project remains consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that it will not adversely affect the Bay or public access to or enjoyment of the Bay, the Executive Director may issue an amendment to an existing permit, pursuant to Government Code Section 66632(f) and Regulation Section 10822.

- F. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

#### **IV. Standard Conditions**

- A. **Permit Execution.** This amended permit shall not take effect unless the permittee(s) execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur, or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute, and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.
- D. **Permit Runs with the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.

- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee(s) or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

**PERMIT NO. 2017.007.02 (AMENDMENT NO. TWO)**  
Kilroy Realty TRS, Inc. and City of South San Francisco

July 30, 2021  
Page 37

**M. Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

**N. Best Management Practices**

- 1. Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
  - 2. Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
- O. In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

DocuSigned by:  
  
FD186E908010417...

LAWRENCE J. GOLDZBAND  
Executive Director  
San Francisco Bay Conservation and  
Development Commission

LIG/AD/ra

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board,  
Attn.: Certification Section  
Environmental Protection Agency

**PERMIT NO. 2017.007.02 (AMENDMENT NO. TWO)**  
Kilroy Realty TRS, Inc. and City of South San Francisco

July 30, 2021  
Page 38

\* \* \* \* \*

**Receipt acknowledged, contents understood and agreed to:**

Executed at South San Francisco

Kilroy Realty TNC, Inc.

**Permittee**

On 8/2/2021 | 2:08:12 PM PDT

By: DocuSigned by:  
Jonas Vass  
455D8E1BA1D54AC...

Jonas Vass

**Print Name**

Sr VP Development

**Title**

\* \* \* \* \*

**Receipt acknowledged, contents understood and agreed to:**

Executed at South San Francisco

City of South San Francisco

**Permittee**

On 8/24/2021 | 7:46:41 AM PDT

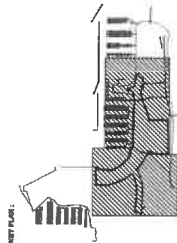
By: DocuSigned by:  
Mike Futrell  
6852134787CA4DB...

Mike Futrell

**Print Name**

City Manager

**Title**



**BCDC Permit  
# 2017.007.00**

**Exhibit A**  
**PUBLIC ACCESS**  
**AND OPEN SPACE**

AMERISCAPE ARCHITECT:  
**JAMES CORNER FIELD OPERATIONS**  
30 BATTERY STREET, SUITE 1500, SAN FRANCISCO, CA 94111

[illegible]

CLIENT: **LOYSTER POINT DEVELOPMENT, LLC**  
185 CYRIL POINT BLVD. SUITE 509  
SOUTH SAN FRANCISCO, CA 94080  
**CITY OF SOUTH SAN FRANCISCO**

PROJECT NAME

DESCRIPTION: DATE: 04.10.2018 SCALE: 1" = 80'-0"

PUBLIC ACCESS

—

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| FURNISHING LEGEND |     |                         |        |     |                       |
|-------------------|-----|-------------------------|--------|-----|-----------------------|
| SYMBOL            | QTY | DESCRIPTION             | SYMBOL | QTY | DESCRIPTION           |
|                   | 0   | BENCH TYPE 1            | ≡      | 11  | TRASH AND RECYCLING   |
|                   | 1   | BENCH TYPE 2            | •      | 1   | COAL RECEPTACLE       |
| ≡                 | 10  | BENCH TYPE 3            | ++++   | 26  | RESILIENT BOLLARDS    |
| •                 | 3   | B&Q GRILL               | • • •  | 24  | FIXED BOLLARDS        |
| -----<br>15'      | 1   | STAIRS HANDRAIL         | •      | 2   | DINING FOUNTAIN       |
| ≡                 | 20  | BICYCLE RACKS           | ≡      | 5   | DOG WASTE BAG STATION |
|                   | 14  | PONG TABLE              |        | 41  | PARK POLE LIGHT       |
|                   | 2   | ACCESSIBLE PICNIC TABLE | •      | 5   | BOLLARD LIGHT         |

| MATERIALS LEGEND                                                                    |     |                               |                                                |                                             |
|-------------------------------------------------------------------------------------|-----|-------------------------------|------------------------------------------------|---------------------------------------------|
| SYMBOL                                                                              | KEY | DESCRIPTION                   | QUANTITY WITHIN PUBLICLY ACCESSIBLE OPEN SPACE | QUANTITY WITHIN SHORELINE BAND (ARROWPOINT) |
|  | AS  | BAV TYPAL                     | -42,100 SF, 2,200 LF                           | -39,000 SF                                  |
|  | CC  | CONCRETE TIRAILS AND PATHWAYS | -19,000 SF                                     | -19,000 SF                                  |
|  | DG  | STABILIZED DECOMPOSED GRANITE | -11,100 SF                                     | -4,000 SF                                   |
|  | WD  | WOOD DECK                     | -1,200 SF                                      | -185 SF                                     |
|  | CS  | CONCRETE SIDEWALK             | -27,000 SF                                     | -4,400 SF                                   |
|  | SA  | BEACH SAND                    | -13,000 SF                                     | -13,000 SF                                  |
|  | PA  | PLANTING AREA                 | -902,700 SF                                    | 51,600 SF                                   |
|  |     | SHORELINE PLANTING            | -71,200 SF                                     | 71,200 SF                                   |

**LEGEND**

 PUBLIC ACCESS AREA  
(262,300 SF)

 PARCEL 5 PARK AREA  
(152,700 SF)

 DEDICATED OPEN SPACE  
(88,450 SF)

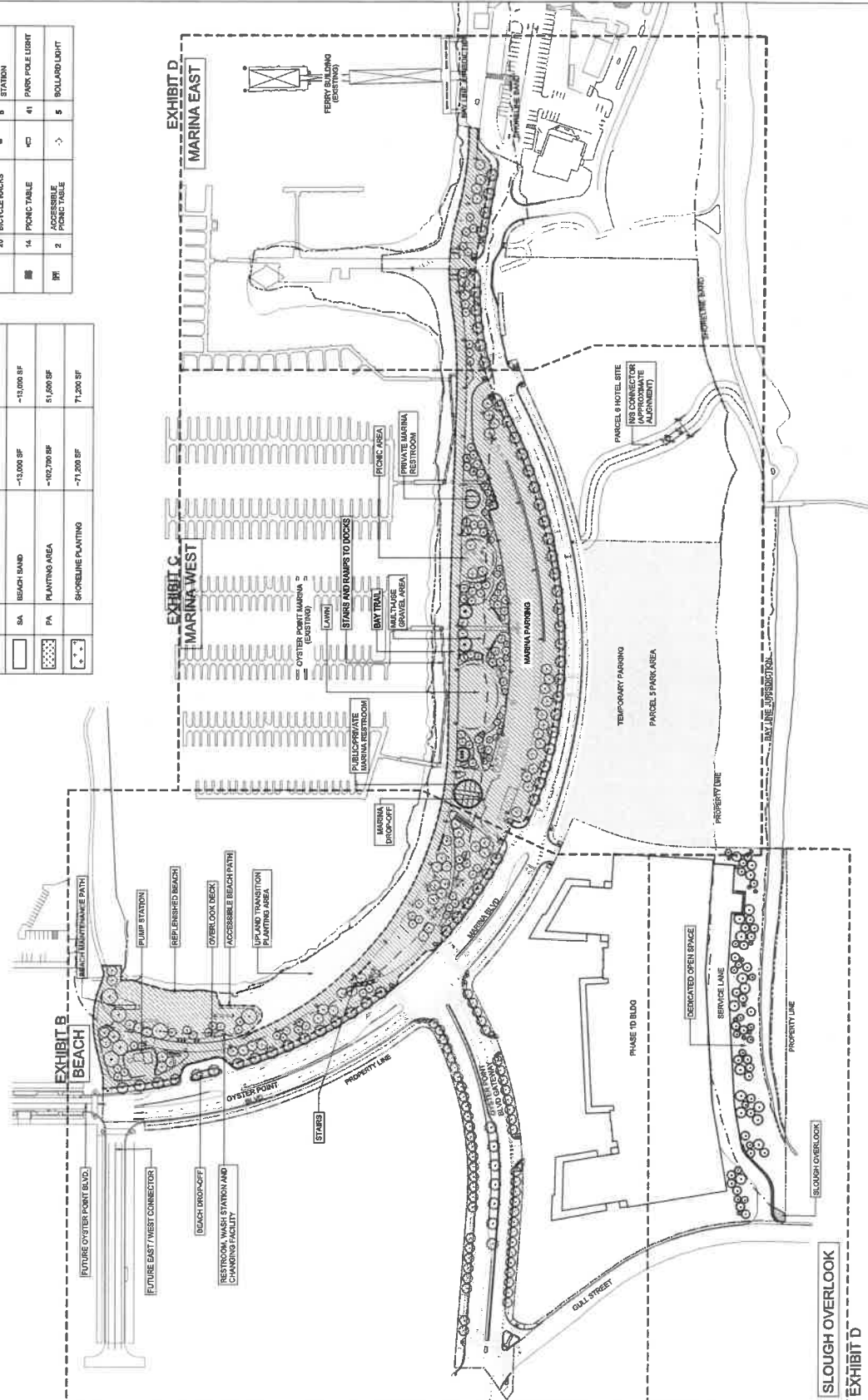
**LEGEND**

 10' SHORELINE BAND

 MARSHLINE

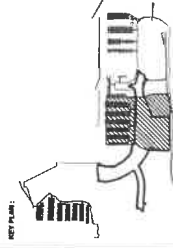
 PUBLICLY ACCESSIBLE OPEN SPACE BOUNDARY

 PROPERTY LINE





# OYSTER POINT DEVELOPMENT



**BCDC Permit  
# 2017.007.00**

## Exhibit C

**JAMES CORNER FIELD OPERATIONS**  
400 MARKET STREET, SUITE 100, SAN FRANCISCO, CA 94102  
CONTACT: JAMES CORNER  
TEL: 415.398.1234  
FAX: 415.398.1235  
WWW.JAMESCORNER.COM

**OYSTER POINT DEVELOPMENT, LLC**  
300 OYSTER POINT BLVD, SUITE 100  
SAN FRANCISCO, CA 94102  
TEL: 415.398.1234  
FAX: 415.398.1235  
WWW.OYSTERPOINTDEVELOPMENT.COM

**OYSTER POINT DEVELOPMENT  
PHASE 1C**

**DATE:** 04.10.2018  
**SCALE:** 1" = 40'-0"

**MATERIALS AND FURNISHING  
PLAN - MARINA EAST**

**DRAWING NO. 3**

### MATERIALS LEGEND

| SYMBOL | KEY | DESCRIPTION                      |
|--------|-----|----------------------------------|
| AS     | AS  | BAIT TRAIL                       |
| CC     | CC  | CONCRETE TRAILS AND<br>PARKWAYS  |
| DO     | DO  | STABILIZED<br>DECOMPOSED GRANITE |
| WD     | WD  | WOOD DECK                        |
| CS     | CS  | CONCRETE SIDEWALK                |
| SA     | SA  | BEACH SAND                       |
| PA     | PA  | PLANTING AREA                    |
|        |     | SHORELINE PLANTING               |

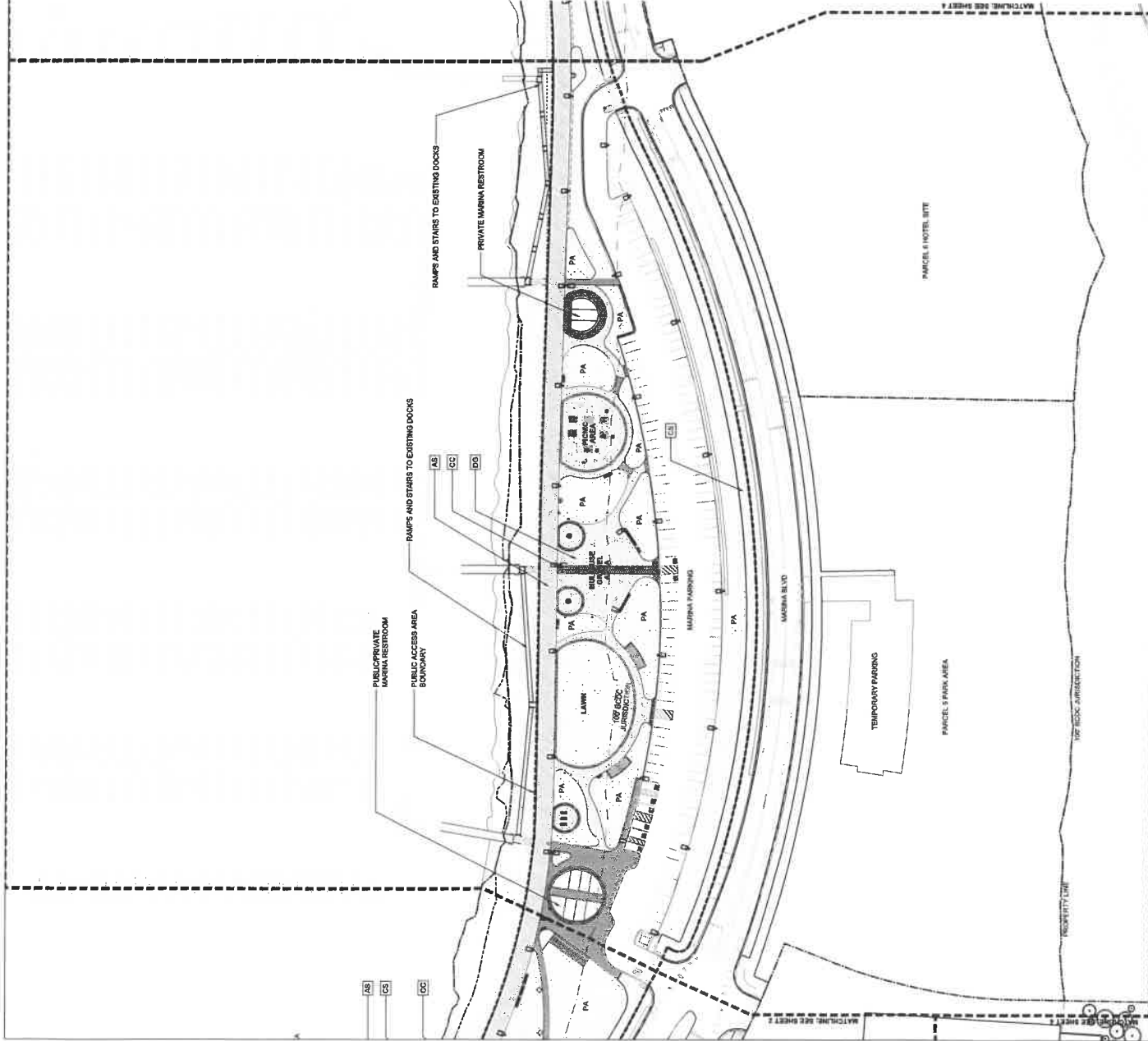
### FURNISHING LEGEND

| SYMBOL | DESCRIPTION                | SYMBOL | DESCRIPTION              |
|--------|----------------------------|--------|--------------------------|
| ○      | BENCH TYPE 1               | ■      | TRASH<br>AND RECYCLING   |
| ◡      | BENCH TYPE 2               | ●      | COAL RECEPTACLE          |
| —      | BENCH TYPE 3               | ◆◆◆    | REMOVABLE<br>BOLLARDS    |
| ■      | BBO GRILL                  | ◆◆◆    | FIXED BOLLARDS           |
| —      | STAIRS HANDRAIL            | ◆      | DINING<br>FOUNTAIN       |
| —      | BICYCLE RACKS              | ■      | DOG WASTE BAG<br>STATION |
| ■      | PICNIC TABLE               | ◆      | PARK POLE LIGHT          |
| ■      | ACCESSIBLE<br>PICNIC TABLE | ◆      | BOLLARD LIGHT            |

|     |                                            |
|-----|--------------------------------------------|
| --- | 100' SHORELINE BAND                        |
| --- | MARINA LINE                                |
| --- | PUBLICLY ACCESSIBLE<br>OPEN SPACE BOUNDARY |
| --- | PROPERTY LINE                              |



**SCALE: 1" = 40'-0"**



KEY PLAN :

## Exhibit D

LANDSCAPE ARCHITECT:  
**JAMES CORNER FIELD OPERATIONS**  
433 BATTERY STREET, SUITE 115, SAN FRANCISCO, CA 94111

**CONSULTANT TEAM:**

**BELDEN ENGINEERS**  
620 PLEASANT BLVD., SUITE 100, PLEASANTON, CA 94566

**GREENE ASSOC.**  
384 ASTOR DRIVE, RIVERSIDE, CA 92503

**H.B. LORNING**  
300 BROADWAY, SUITE 212, SAN FRANCISCO, CA 94107

**NEW STRUCTURAL**  
500 MARKET STREET, SUITE 200, OAKLAND, CA 94607

**VALLEY HILL**  
20314 SEVILLA, SUITE 100, SAN MATEO, CA 94401

CLIENT:  
**OYSTER POINT DEVELOPMENT, LLC**  
366 OYSTER POINT BLVD, SUITE 550  
SOUTH SAN FRANCISCO, CA 94080  
**CITY OF SOUTH SAN FRANCISCO**  
400 GRAND AVENUE  
SOUTH SAN FRANCISCO, CA

### PROJECT NAME

## OYSTER POINT DEVELOPMENT PHASE IIC

|              |          |                    |
|--------------|----------|--------------------|
| DESCRIPTION: |          | SCALE: 4" = 40' AS |
| DRAWN:       | CHECKED: |                    |
| <hr/>        |          |                    |
| <hr/>        |          |                    |

**DRAWING TITLE:**  
**MATERIAL AND FURNISHING**  
**PLAN - MARINA EAST AND**  
**SLOUGH OVERLOOK**

4

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| MATERIALS LEGEND |  | SYMBOL                                                                            | KEY | DESCRIPTION                  |
|------------------|--|-----------------------------------------------------------------------------------|-----|------------------------------|
|                  |  |  | AS  | BAV TRAIL                    |
|                  |  |  | CC  | CONCRETE TRAILS AND PATHWAYS |
|                  |  |  | DG  | STAINLESS REFINISHED GRANITE |
|                  |  |  | WD  | WOOD DECK                    |
|                  |  |  | CS  | CONCRETE SIDEWALK            |
|                  |  |  | SA  | BEACH SAND                   |
|                  |  |  | PA  | PLANTING AREA                |
|                  |  |  |     | SHORELINE PLANTING           |

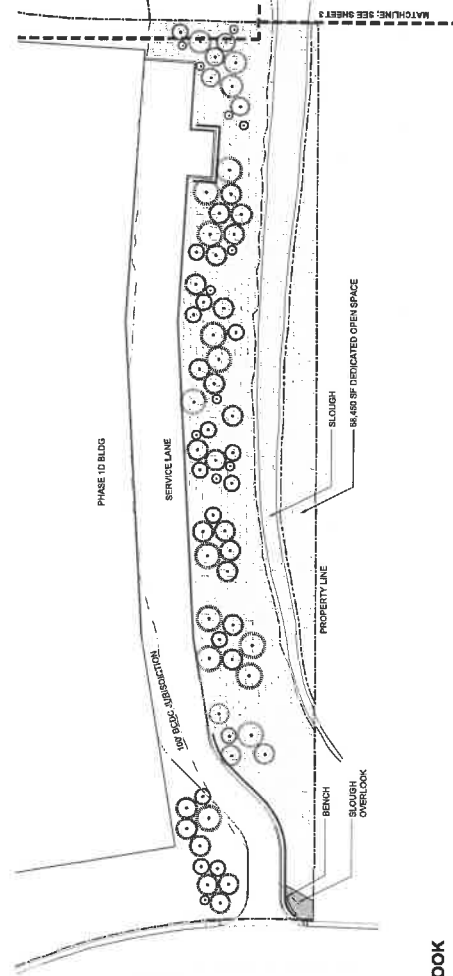
| PUNISHING LEGEND |                         | SYMBOL | DESCRIPTION           |
|------------------|-------------------------|--------|-----------------------|
|                  | BENCH TYPE 1            |        | TRASH AND RECYCLING   |
|                  | BENCH TYPE 2            |        | COAL RECEPTACLE       |
|                  | BENCH TYPE 3            |        | REMOVABLE BOLLARDS    |
|                  | BBO GRILL               |        | FIXED BOLLARDS        |
|                  | STAIRS MATERIAL         |        | DRINKING FOUNTAIN     |
|                  | BICYCLE RACKS           |        | DOG WASTE BAG STATION |
|                  | PICNIC TABLE            |        | PARK POLE LIGHT       |
|                  | ACCESSIBLE PICNIC TABLE |        | BOLLARD LIGHT         |

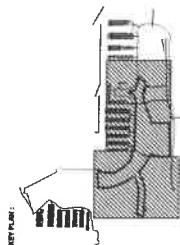
### LEGEND

- 100' SHORELINE BAND
- MARSHLINE
- PUBLICLY ACCESSIBLE  
OPEN SPACE BOUNDARY
- PROPERTY LINE

NORTH 

## SLOUGH OVERLOOK





**BCDC Permit  
# 2017.007.00**

## Exhibit E

LANDSCAPE ARCHITECT:  
**JAMES CORNER FIELD OPERATIONS**  
10 HATFIELD STREET, SUITE 110, SAN FRANCISCO, CA 94111

**CONSULTANT FIRM:**  
 ELSON ENGINEERS  
 4700 EAST CHAPMAN AVENUE, ORANGE COUNTY, CA 92669  
**DESIGNER:**  
 REMANUE ASSOC.  
 18 LIGHTING  
**GENERAL CONTRACTOR:**  
 JPM STRUCTURAL  
 3151 N. MILWAUKEE, SUITE 500, SAN JOSE, CA 95131  
**CLIENT NAME:**  
 300 N. LAS PORTAS BLVD., SUITE 1A, PUEBLO BLVD., CA 95024

CLIENT: OYSTER POINT DEVELOPMENT, LLC

CITY OF SOUTH SAN FRANCISCO

10 GRAND AVENUE,  
SOUTH SAN FRANCISCO, CA

## OSTER POINT DEVELOPMENT PHASE I C

— **CONCLUSIONS.**

| NAME: | CHECKED: |
|-------|----------|
|       |          |

DATE: 04.10.2018 SCALE: 1" = 80'-0"

## NEW CORRIDOR

CONCLUSIONS

**5**

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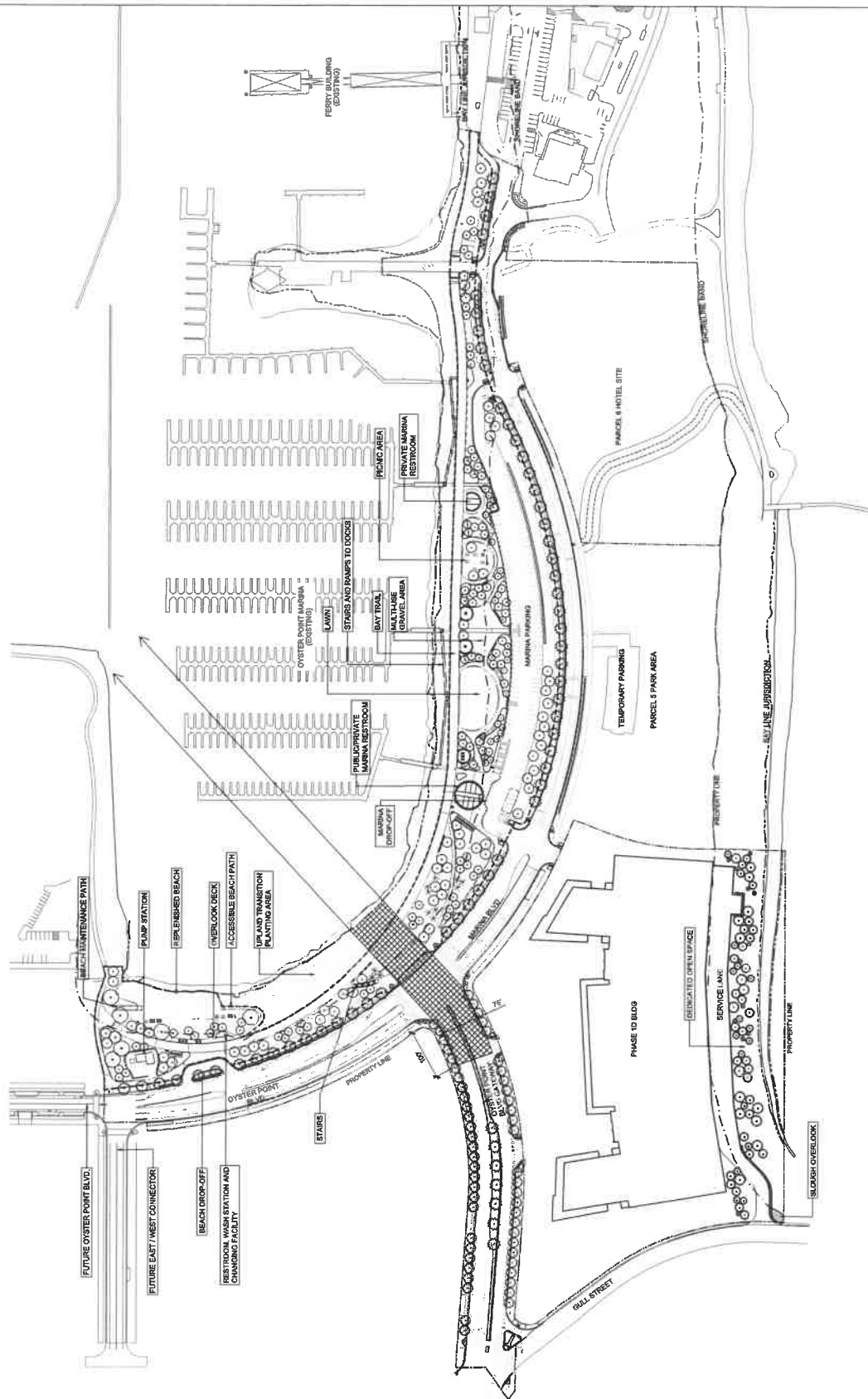


Exhibit C

**DEVELOPMENT AGREEMENT TERM SHEET**

Development Agreement (DA) - Term Sheet

Seller: City of South San Francisco  
Buyer: Ensemble Investments, Inc.

Property:

| Property Address                                      | Parcel Number |
|-------------------------------------------------------|---------------|
| 367 Marina Boulevard<br>South San Francisco, CA 94080 | 015-010-970   |

Property Plan: Up to 350 rooms; full-service hotel facility which is the quality of a “AAA” (or similar rating) four diamond or higher hotel, comparable to a Hilton Curio or Marriott Autograph Collection hotel.

| Term                                                                                                                                                                                                                                                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.) Execute and implement an Operations & Maintenance Agreement with the City providing the City and/or the Water Board with financial assurance for completion of the Buyer’s Post-Closing Mitigation Measures.                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 2.) Execute and implement a Maintenance and Security Agreement of site after execution of PSA.                                                                                                                                                                                   | <ul style="list-style-type: none"><li>- Maintain erosion control of site.</li><li>- Installation of temporary fence within timeframe of installation of temporary BCDC trail.</li><li>- Installation of temporary frontage improvements.</li></ul>                                                                                                                                                                                                                                                                                                                     |
| 3.) Developer to construct and maintain a temporary north-south Bay Trail connection and a permanent north-south Bay Trail connection on site, at Developer’s expense, as described in San Francisco Bay Conservation and Development Commission (“BCDC”) Permit No. 2017-007-02 | <ul style="list-style-type: none"><li>- ADA compliant</li><li>- Complies with BCDC standards and existing Permit No. 2017.007.02, and any amendments.</li><li>- Ensemble to agree to any amendments BCDC places on the condition.</li><li>- Temporary path to be constructed no later than 6 months following the completion of Phase IC work, which is currently estimated to be completed by July 1, 2022; parties anticipate that temporary path will be completed prior to finalizing the DA, in which case the DA will only address the permanent path.</li></ul> |

|                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>- Permanent path to be constructed within the hotel development and open to the public upon opening of the hotel, but no later than 36 months after the closure of the temporary path.</li> <li>- constructed of a durable, all-weather accessible material.</li> </ul>                                                                                                                                                                                                                                                          |
| 4.) Developer to enter into a Transient Occupancy Tax (TOT) rebate Agreement with City.                                                                                                                                                            | <p>Agreement Parameters:</p> <ul style="list-style-type: none"> <li>- 50 TOT rebate for fifteen years;</li> <li>- The total TOT rebate is capped at the 15-year projection of 44,530,000</li> <li>- If the hotel exceeds revenue forecasts, the agreement has a condition to allow "homerun insurance," for the City to also benefit in the event of a sale; City to receive 5% of Net Proceeds of a Property Sale (defined as selling greater than 50% ownership) limited and reduced to the extent Investors receive a minimum 20.00% IRR at time of sale.</li> </ul> |
| 5.) Condition that memorializes Developer's commitment to agree to a future Community Facilities District (CFD) assessment of up to \$1 per square foot, if formed within 120 months of the execution of the DA.                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 6.) Developer is responsible for the installation of a new pump station onsite, to accommodate for additional flow from the hotel, as detailed in the 2011 Successor Agency/ City DDA (Section 3.3.2a "Phase IIC Improvements").                   | <ul style="list-style-type: none"> <li>- The initial cost of the new sewer pump station is shared between the Successor Agency (\$1,822,124) and City (\$839,490); the Successor Agency currently is holding these Successor Agency funds in a dedicated reserve account. Ensemble will agree to contribute \$250,000 towards the construction costs, with the City/Successor Agency being responsible for additional cost-overruns. This would include design and installation (but not maintenance).</li> </ul>                                                       |
| 7.) Developer is responsible for allowing access for methane monitoring of the closed landfill. Developer is also obligated to ensure that the design of the hotel and surrounding site will accommodate and permit access for methane monitoring. | <ul style="list-style-type: none"> <li>- Must allow access for any third party consultant or Successor Agency representatives to maintain methane monitoring subject to applicable regulatory monitoring procedures.</li> </ul>                                                                                                                                                                                                                                                                                                                                         |

|                                                                            |  |
|----------------------------------------------------------------------------|--|
| 8.) Developer and City to adhere to all dates addressed in Master Schedule |  |
|----------------------------------------------------------------------------|--|

**Master Development Schedule - Updated October 11, 2021**

| <b>Activity</b>                                                            | <b>Milestone</b>                                                                                                                                 |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Submit application for Precise Plan                                        | No later than May 1, 2022                                                                                                                        |
| Receive Development Agreement Approval (first reading)                     | No later than December 16, 2022                                                                                                                  |
| Receive Entitlement Approval                                               | No later than December 16, 2022                                                                                                                  |
| Closing of Escrow                                                          | No later than December 31, 2022                                                                                                                  |
| Submit application for Building Permit                                     | No later than December 31, 2023.                                                                                                                 |
| Delivery of Proof of an Approved Construction Loan from a reputable lender | Within 18 months of submitting for Building Permit, but no later than June 30, 2025.                                                             |
| Delivery of a Final Construction Contract                                  | Within 18 months of submitting for Building Permit, but no later than June 30, 2025.                                                             |
| Construction Commences                                                     | Within 19 months of submitting for building permit, but no later than July 31, 2025.                                                             |
| Substantial Completion of Construction                                     | Within 36 months of construction commencement; targeted for September 2027 (26-month schedule), but no later than June 2028 (35-month schedule). |
| Estimated Opening of hotel                                                 | Targeted November 2027, but no later than August 2028.                                                                                           |

Note that all target dates are subject to automatic extension for delays due to factors beyond Developer's reasonable control in accordance with the force majeure provisions of the Development Agreement.

Exhibit D

**GRANT DEED**

Recording Requested by  
and when Recorded, return to:

City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383 &  
27388.1(a)(2)

SUBJECT TO DOCUMENTARY  
PER REVENUE AND TAXATION CODE §  
11911

APN: 015-010-970

(SPACE ABOVE THIS LINE RESERVED  
FOR RECORDER'S USE)

**GRANT DEED**

**RECITALS**

A. The City of South San Francisco ("Grantor") is the owner of the Property (as defined below).

B. Ensemble Investments, LLC ("Grantee") agrees to purchase the Property, and Grantor agrees to sell the Property to Grantee, subject to the terms and conditions of the Purchase and Sale Agreement ("PSA") approved by the City Council on October 27, 2021 by Resolution No. \_\_\_\_\_; and

F. Grantor and Grantee agree that the purpose of this Grant Deed is to convey the Property to the Grantee pursuant to the terms set forth in the PSA.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee all that real property located in the City of South San Francisco, County of San Mateo, State of California and more particularly described in Exhibit A ("Property"), attached hereto and incorporated into this grant deed ("Grant Deed") by this reference.

This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

**SIGNATURES ON FOLLOWING PAGES**

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 2022.

GRANTOR:

THE CITY OF SOUTH SAN FRANCISCO

By: \_\_\_\_\_  
Mike Futrell  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sky Woodruff  
City Attorney

SIGNATURES MUST BE NOTARIZED

EXHIBIT A to Grant Deed

LEGAL DESCRIPTION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

) ss.

County of San Mateo )

On , 20\_\_\_\_ before me, , a Notary Public, in

and for said State and County, personally appeared , who proved to

me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

) ss.

County of San Mateo )

On , 20\_\_\_\_ before me, , a Notary Public, in

and for said State and County, personally appeared , who proved to

me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC

Exhibit E

**POSTCLOSURE RESPONSIBILITY MATRIX**

## Exhibit F

### **BUYER'S POST-CLOSING MITIGATION MEASURES**

Buyer shall perform, at Buyer's sole expense, each of Buyer's Post-Closing Mitigation Measures identified in this Exhibit F. The measures identified herein are not intended as Buyer's sole post-closing obligations with respect to the Pre-Existing Property Conditions and shall not reduce or otherwise diminish Buyer's other obligations under the Agreement with respect to such conditions or otherwise. Capitalized terms not specifically defined herein shall have the meaning prescribed in the Agreement.

#### **A. Site Security**

1. Provide site security for the Property and all building(s) at the Property. Security features should be designed to prevent unauthorized access by the general public. Building security features may include barriers and/or restricted access signage and alarm systems.

#### **B. Engineering Measures - Fill /Capping/Construction Activities**

1. Install a minimum of nine (9) feet of clean fill or as otherwise engineered by a qualified civil engineer and subject to City Public Works approval and building plan check within the building footprint area above the landfill cap. Outside of the building footprint, utility trenches shall be located at least twelve (12) inches above the top of the landfill cap within clean fill, except to the extent necessary to connect to existing utility connections. Any utility connections within the cap or below the cap shall occur in trenches with a protective clay layer and clean backfill as engineered by a qualified civil engineer subject to City Public Works approval and building plan check.
2. Install a geotextile fabric (as a marker) on top of the erosion resistant layer (i.e. the landfill cap) so the top of the cap can be identified during future construction activities.
3. Install all landscaping and irrigation systems at elevations within the newly-installed fill layer above the cap to protect cap integrity.
4. Grade/maintain the Property to prevent surface water accumulation. Install and maintain survey monuments on the Property to monitor landfill settlement. Quarterly inspections are required to ensure monuments are intact and usable and any repairs or replacement are performed as necessary. Installation of at least two permanent survey monuments are required so that the location and elevation of refuse, final cover, and landfill gas system components can be determined throughout the post-closure period. Additionally, monuments will be surveyed every five years and settlement maps will be produced throughout the post-closure period or until settlement has stopped.

#### **C. Engineering Measures - MMS/Building**

1. Design, install and operate a methane mitigation and monitoring system (MMS) approved in advance by the Water Board and City in building structures. The MMS shall meet the requirements of Title 27 CCR Sections 20931 and 21190, for structures on landfilled areas,

and of those listed in the PCMMP. The MMS shall also be designed in general accordance with methane mitigation standards used by Los Angeles County Public Works Gas Hazard Mitigation Policy and Standards (<https://dpw.lacounty.gov/epd/swims/onlineservices/methane-mitigation-standards.aspx>).

At a minimum, the MMS shall include a vapor barrier membrane ( VBM ) combined with a horizontal collection and venting system below the VBM. The venting system vents vapors through vertical riser piping that extends from beneath the building to above the roof level. Mechanical blowers will be on standby for use as an active venting system in the event elevated methane levels are detected by electronic sensors installed at various locations within the buildings. The MMS shall also be designed to mitigate potential vapors of other contaminants, including VOCs.

2. Design and install trench dams in utility trenches to prevent migration of methane and/or volatile organic compounds ( VOCs ) into buildings.
3. All building utilities, methane membrane and collection pipes should be connected/adhered to underside of building foundation slab or installed in a manner that prevents damage from potential future ground settlement.
4. Utilities should be designed to accommodate potential future ground settlement in areas outside of building footprint.
5. Perform all required inspections, maintenance, monitoring and reporting in connection with the approved MMS meeting the requirements of Title 27 CCR Sections 20931 and 21190, for structures on landfilled areas, the requirements listed in the PCMMP and other applicable requirements and regulations. Provide copies of all reports to the City.

D. Site Maintenance, Monitoring and Reporting

1. Maintain all hardscapes and softscapes at the Property. Hardscapes are building slabs, slab on grade, roadways, sidewalks and any other hard surfaces over the final landfill cover ( cap ) softscapes are landscaped areas over the cap. Maintain all irrigation systems associated with softscape. Inspect all final cover at the Property, including buildings, hardscape and softscape at the Property monthly during the wet season and quarterly during the dry season. In the event corrective action is warranted, promptly implement any necessary corrective action.
2. Prepare and implement an Operation and Maintenance ( O & M ) Plan for the Property, approved in writing by the San Francisco Regional Water Quality Control Board ( RWQCB ) to address routine inspections, maintenance and reporting for the a) landfill cap b) methane and VOC collection, monitoring and alarm systems and c) groundwater, surface water and leachate monitoring systems, as required.
3. Prepare annual maintenance and monitoring reports relating to implementation of the O & M Plan for the Property, methane and VOC monitoring plan, surface water sampling monitoring plan, and elevation monitoring plan, as required. Submit maintenance and monitoring reports to stakeholders.

4. Prepare and implement a methane and volatile organic compound ( VOC ) monitoring plan for the Property, including the installation of any necessary monitoring wells, approved in writing by the Water Board that describes the frequency and procedures for monitoring in structures and perimeter areas of the site and required corrective actions if monitoring results exceed established thresholds. Perform required reporting and provide copies of all reports to the City. Quarterly monitoring is required within subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.
  5. Prepare and implement an elevation monitoring plan for the Property.
  6. Review and properly update all maintenance and monitoring plans and ensure that corrective actions are implemented in a timely manner.
- E. Emergency Response Measures
1. Prepare and implement a post-closure Emergency Response Plan (ERP) for the Property outlining the procedures to be followed in the event of an emergency (such as fires, explosions, earthquakes, floods, vandalism, surface drainage problems, waste releases, etc.). Procedures for dealing with each type of emergency should be included in the ERP. Multiple agencies (fire, police, City, etc.) should be involved with preparation of the plan.
  2. Require annual (at a minimum) updates and training for the ERP.
  3. For planned or emergency subsurface activities, implement the ERP, assess damage and perform corrective action as necessary.
- F. Administrative/ Legal Measures Site Maintenance/Cap/Construction Activities
1. Have entered into a binding voluntary oversight agreement with the Water Board (i) pursuant to which the Water Board will oversee Buyer's compliance with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property, and (ii) confirming that with respect to such requirements, the Buyer is the party primarily responsible for such compliance.
  2. Comply with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property.
  3. Execute and implement an O & M Agreement with the City providing the City and/or the Water Board with financial assurance for completion of the Buyer's Post-Closing Mitigation Measures.
  4. Establish and assure an automatic dig alert notification to City Public Works in advance of any soil disturbance at the Property.

5. All construction activities that potentially disturb landfill cap shall be performed only pursuant to a Soil Management Plan (SMP) approved in advance by the Water Board.
6. Record a land use covenant prohibiting construction/subsurface work unless City is notified in advance and the work is performed pursuant to the Water Board-approved SMP.
7. Require hotel personnel to notify City if geotextile marker fabric is encountered or visible.

## Exhibit G

### **SELLER'S POST-CLOSING MITIGATION MEASURES**

Seller shall perform, at Seller's sole expense, each of Seller's Post-Closing Mitigation Measures identified in this Exhibit G. Nothing herein shall reduce or otherwise diminish Seller's other obligations under the Agreement. Capitalized terms not specifically defined herein shall have the meaning prescribed in the Agreement.

#### **A. Site Security**

1. Provide site security for landfill areas other than the Property ( City andfill Areas ). Security features should be designed to prevent unauthorized access by the general public and may include barriers, and restricted access signage, locks and confined space signage for subsurface vaults and utility trenches and locking well caps for landfill gas and groundwater monitoring wells.

#### **B. Site Maintenance, Monitoring and Reporting**

1. Cover. Inspect final cover on all areas of the City andfill Areas monthly during the wet season and quarterly during the dry season. In the event corrective action is warranted in the City andfill Areas, promptly implement any necessary corrective action.
2. Groundwater and leachate Monitoring Systems. Inspect and maintain required groundwater and leachate monitoring systems for the City andfill Areas. Perform required monitoring and reporting.
3. Surface Water Monitoring Systems. Sample and monitor required surface water monitoring system, inclusive of stormwater drainage piping and associated catch basins and drainage channels, on the City andfill Areas. Perform required system maintenance and reporting.
4. Surface Water Sampling Monitoring Plan. Prepare and implement a surface water sampling monitoring plan for the City andfill Areas that describes the procedures for monitoring of surface water and the storm drainage system and required corrective actions if monitoring results exceed plan-established thresholds.
5. Elevation. Prepare and implement an elevation monitoring plan for the City andfill Areas.
6. andfill Gas Monitoring Systems. Inspect and maintain required landfill gas monitoring systems for the City andfill Areas. Perform required inspection and reporting. There are no landfill gas monitoring components located on the Property.
7. Methane/ OC Wells. Install methane/ OC monitoring wells outside and separate from buildings on City andfill Areas. Perform required monitoring and reporting.
8. Methane/ OC Monitoring. Monitor for methane/ OCs within subsurface structures on City andfill Areas. Perform required reporting. Quarterly monitoring is required within

subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.

9. O M Plan. Prepare and implement an Operation and Maintenance ( O M ) Plan for the City landfill Properties, approved in writing by the San Francisco Regional Water Quality Control Board ( Water Board ) to address routine inspections, maintenance and reporting for the a) landfill cap b) methane and OC collection, monitoring and alarm systems and c) groundwater, surface water and leachate monitoring systems.
10. O M Reporting. Prepare annual maintenance and monitoring reports relating to implementation of the O M Plan, methane and OC monitoring plan, surface water sampling monitoring plan, and elevation monitoring plan, as required. Submit maintenance and monitoring reports to stakeholders.
11. Methane and OC Monitoring Plan. Prepare and implement a methane and volatile organic compound ( OC ) monitoring plan for the City landfill Areas approved in writing by the Water Board that describes the frequency and procedures for monitoring in structures and perimeter areas of the site and required corrective actions if monitoring results exceed established thresholds. Perform required reporting. Quarterly monitoring is required within subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.

C. Survey Monuments

1. Install and maintain survey monuments on the City landfill Property to monitor landfill settlement. Quarterly inspections are required to ensure monuments are intact and usable, and any repairs or replacement are performed as necessary. Installation of at least two permanent survey monuments are required so that the location and elevation of refuse, final cover, and landfill gas system components can be determined throughout the post-closure period. Additionally, monuments will be surveyed every five years and settlement maps will be produced throughout the post-closure period or until settlement has stopped.

D. Emergency Response Measures

1. Prepare and implement a post-closure Emergency Response Plan (ERP) for the City landfill Property outlining the procedures to be followed in the event of an emergency (such as fires, explosions, earthquakes, floods, vandalism, surface drainage problems, waste releases, etc.). Procedures for dealing with each type of emergency should be included in the ERP. Multiple agencies (fire, police, City, etc.) should be involved with preparation of the plan.
2. Require annual (at a minimum) updates and training for the ERP.
3. For planned or emergency subsurface activities, implement the ERP, assess damage and perform corrective action as necessary.

5009197.1



## CONTRACT/AGREEMENT APPROVAL FORM

Date:

12/20/22

Name of Contract/Agreement

First Amendment to PSA - Ensemble

Originating Department/Responsible Person, ext.

ECD/Ernesto Lucero

Vendor

Ensemble Investments

Routing Instructions:

Amendment

TYPE OF CONTRACT:

Have there been any changes to the Contract Template? ☒ No☐ Yes

CONTRACT AMOUNTS: Not Applicable

APPROVAL AUTHORITY: Council

INSURANCE REQUIREMENTS:

Waivers requested

☒ No☐ Yes (If Yes, Route to Risk Manager for signature first)

BUDGETARY:

☒ Included in Budget (Simpler report attached showing amounts)

Amount

Project String

Accounting String

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ATTACHMENTS:

☒ Agreement and all Exhibits☐ Resolution (all contracts over \$150k)☐ SIR Questionnaire☐ Certificate of Insurance, naming City of South San Francisco as an Additional Insured

DEPARTMENT HEAD ACKNOWLEDGEMENT:

DocuSigned by:

The contract, amendments, exhibits, insurance requirements/waivers and attachments have been reviewed and included.

RISK MANAGER APPROVAL OF INSURANCE WAIVER:

DocuSigned by:

Sky Woodruff

D47F525AE463483

CITY ATTORNEY APPROVAL OF ENTIRE AGREEMENT:

Comments:

☐ Approval of Agreement☐ Approval of Insurance☐ Add Agreement to Contract Tracker

ASSISTANT CITY MANAGER'S APPROVAL:

DocuSigned by: (only if amount is over \$25,000)

Mike Putrell

6852434787CA4DB...

City Manager on behalf of Council

FINAL APPROVAL:

CITY CLERK:

☐ Please attest, keep a copy for your files, and return to Originating Department☐ Please upload to Laserfiche and return to Originating Department

COPY SENT TO VENDOR:

## FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(367 Marina Boulevard /Assessor's Parcel Number: 015-011-350)

This First Amendment to the Purchase And Sale Agreement And Joint Escrow Instructions (this "Amendment") is made and effective as of December <sup>20, 2022</sup>2022 ("Effective Date") by and between the City of South San Francisco, a municipal corporation ("Seller") and Ensemble Investments, LLC, a California limited liability company ("Buyer"). Seller and Buyer are sometimes collectively referred to herein as "the Parties." Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

### RECITALS

A. Seller and Buyer entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated December 10, 2021, ("Agreement") with respect to that certain real property located at 367 Marina Boulevard, South San Francisco, California (Assessor's Parcel Number 015-011-350 [015-010-970 in the Purchase and Sale Agreement, subsequently re-numbered]) ("Property");

B. The Agreement provides that escrow for conveyance of the Property will close no later than December 31, 2022;

C. The Parties have agreed to extend the deadline for close of escrow as memorialized below.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and incorporating all of the above as though set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, **the parties hereby agree as follows**, with amendments to the Agreement reflected as additions in double underline and deletions in ~~strike through~~.

1. Section 4.1 Condition of Title/Preliminary Title Report is amended to add the following paragraph:

No earlier than sixty (60) days and no later than thirty (30) days prior to the Closing Date, Seller shall cause the Title Company to update the Preliminary Report. For any new title matters caused or consented to by Seller that are not on the Preliminary Title Report dated October 14, 2021 and are not Permitted Exceptions, such new matters shall be deemed Monetary Liens that Seller shall be obligated to be removed or released from title before the Closing. For any new title matters that are not Permitted Exceptions and are not caused or

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

consented to by Seller, such new matters shall be deemed Disapproved Exceptions and Seller shall either (i) cause such Disapproved Exceptions to be removed prior to Closing, or (ii) notify Buyer that Seller will not cause Disapproved Exceptions to be cured or removed. Buyer may either (i) notify Seller in writing that it has elected to waive the Disapproved Exceptions and proceed with the purchase contemplated herein, or (ii) terminate this Agreement, whereupon, the Deposits and all interest accrued shall immediately be released by the Escrow Holder and neither Party shall have any further obligation or liability to the other with respect to the transaction contemplated by this Agreement, except for those that expressly survive termination. Notwithstanding the foregoing, in the event that the Agreement is terminated pursuant to this Section 4.1, the Parties reserve the right to pursue damages and/or claims against the other Party for conduct that occurred prior to the execution of this Amendment. Seller shall also deliver updated estoppel certificates related to exceptions 18 and 19 on the current Preliminary Report dated no earlier than thirty (30) days prior to Closing.

**2. Section 4.5(a) "Development Agreement, Preliminary Pro Forma and Project Entitlements" is amended as follows:**

Buyer and Seller agree to negotiate diligently and in good faith the terms of the Development Agreement on such terms set forth in the Development Agreement term sheet attached hereto as Exhibit C and such other terms as shall be acceptable to each party in its sole discretion. Buyer and Seller will also work diligently and in good faith to process all discretionary entitlements for the Project concurrently with the negotiation of the Development Agreement. Buyer will use good faith efforts to submit an entitlement application and seek City Council approval of the Development Agreement and all discretionary entitlements for the Project prior to the Closing Date (as defined in Section 5.1 below). Notwithstanding anything else to the contrary, if the Buyer fails to submit a precise plan and associated entitlement application by May 1, 2022, then the Seller, in its sole discretion, may elect to terminate this Agreement and may retain all Deposits paid pursuant to this Agreement. In the event that Seller exercises its right to terminate pursuant to this provision, neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. The Parties acknowledge that the second reading of the ordinance approving the Development Agreement may occur after Closing, in which case the Development Agreement shall be executed and recorded post-Closing. However, if the Development Agreement has been fully approved by the City Council prior to the Closing Date, December 31, 2022, then an executed copy of the Development Agreement will be deposited into escrow and recorded by the San Mateo County recorder concurrently with the Close of Escrow.

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

3. A new Section 4.5(d) is added as follows:

The Parties understand and agree that during the period of January 1, 2023 through the Seller's completion of the statutory process outlined in Government Code section 54220 et seq, the Parties shall cease all negotiations regarding the disposition of the Property. If completion of the statutory process does not result in the sale of the Property to a third-party who provided a notice of interest to Seller under Government Code section 54220 et seq., then the Parties shall resume negotiations regarding the terms of the Development Agreement under Section 4.5(a) of this Agreement. If the statutory process results in a sale to a third-party, then such sale shall not constitute a breach by Seller and this Agreement shall terminate and the Deposits shall be returned to the Buyer. The Parties waive, release, remise, acquit and forever discharge each other from claims, liability, harm, and/or costs and damages stemming from delay pursuant to the extension of time provided for under this Amendment or from a sale of the Property to a third-party pursuant to the statutory process outlined in Government Code section 54220 et seq. Notwithstanding the foregoing and regardless of whether this Agreement has been terminated pursuant to this Section 4.5(d), the Parties reserve the right to pursue damages and/or claims against the other Party for conduct unrelated to the statutory process outlined in Government Code section 54220 et seq. that occurred prior to the execution of this Amendment; provided, however, that in the event of a sale of the Property to a third-party pursuant to Government Code section 54220 et seq., if Seller reimburses Buyer for all of Buyer's out-of-pocket costs actually incurred in connection with Buyer's pursuit of the Project after the Effective Date of the Agreement (i.e., December 10, 2021), including but not limited to Buyer's due diligence evaluation, and Buyer's pursuit of Project entitlements, as substantiated by Buyer with reasonable documentation, then Buyer shall waive, release, remise, acquit and forever discharge Seller from any and all claims, liability, harm, and/or costs and damages arising under the Agreement, whether such claims accrued before or after execution of this Amendment. This Section 4.5(d) shall survive the termination of this Agreement.

4. Section 5.1 is Amended as follows:

Closing. The escrow for conveyance of the Property shall close ("Close of Escrow" or "Closing") within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Buyer's Closing Conditions (as defined in Section 5.2 below) and all of the Seller's Closing Conditions (as defined in Section 5.3 below), which shall occur no later than six (6) months after the Seller concludes the statutory process outlined in Government Code section 54220 et seq. (where such statutory process does not result in a sale of the Property to a third-party) December 31, 2022, or such earlier date that Buyer may specify to Seller with thirty (30) days prior written notice (the "Closing

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

Date"). Upon Buyer's written request, Seller may grant an extension of the Closing Date by an additional three (3) months.

5. **Section 5.3(k) is Amended as follows:**

Seller has approved all discretionary entitlements for the Project, including the first reading of an ordinance approving a Development Agreement. Buyer will deliver or complete items ( c ), ( d ), ( e ), (t) and (g) at least seven (7) business days prior to Closing. If any of the Seller's Closing Conditions shall not have been satisfied on or before the Closing Date as a result of a breach or default by Buyer, then Seller shall have its rights under Section 7.2. Notwithstanding the foregoing or anything contained herein to the contrary, if Buyer has failed to satisfy the condition contained in Section 5.3( e) above by the date specified by BCDC or if Seller's Closing Conditions have not otherwise been satisfied on or before ~~December 31, 2022~~ the Closing Date, the Seller may, in its sole discretion, immediately terminate this Agreement. For the avoidance of doubt, the Parties acknowledge that the second reading of the ordinance approving the Development Agreement may occur after Closing, in which case the Development Agreement shall be executed and recorded post-Closing. However, if the Development Agreement has been fully approved by the City Council prior to the Closing Date ~~December 31, 2022~~, then an executed copy of the Development Agreement will be deposited into escrow and recorded concurrently with the Close of Escrow.

6. **Section 7.1 is Amended as follows:**

In the event of a breach or default under this Agreement by Seller, which is not cured within ten (10) days (such longer period as may be reasonably required to cure such default) after written notice, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance until Seller is able to perform with the understanding that such extension cannot extend beyond the Closing Date ~~December 31, 2022~~; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer (including the Deposits), reserving all other rights and remedies available to it under this Agreement or otherwise at law or in equity, including the right to collect costs and damages for such breach from Seller.

7. **Master Development Schedule contained in Exhibit C is Amended as shown in Attachment 1 Exhibit C-Revised attached hereto and incorporated herein.**

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

8. **General Provisions.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Amendment and the meaning of the provisions hereof. The provisions of this Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Except as expressly amended pursuant to this Amendment, the terms and provisions of the Agreement shall remain unmodified and shall continue in full force and effect, and Buyer and Seller hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern. The terms and provisions of this Amendment, together with the Agreement, shall constitute all of the terms and provisions to which Buyer and Seller have agreed with respect to the transaction governed hereby, and there are no other terms and provisions, oral or written, that apply to the Agreement and/or the Property other than as set forth in the Agreement as modified by this Amendment. The provisions of this Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns.

9. **Counterparts.** This Amendment may be executed in multiple counterparts, all of which shall constitute an original, and all of which together shall constitute a single instrument. Counterparts of this Amendment executed and delivered by facsimile, email or other means of electronic delivery shall constitute originals for all purposes.

**SIGNATURES ON FOLLOWING PAGE**

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

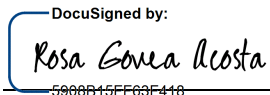
**IN WITNESS WHEREOF**, the parties have executed this Amendment as of the Effective Date.

**SELLER:**

**CITY OF SOUTH SAN FRANCISCO**

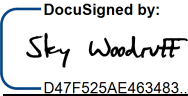
By:   
6052134707CA4DB...  
Mike Futrell  
City Manager

**ATTEST:**

By:   
5000B15FF03F410...  
Rosa Govea Acosta  
City Clerk



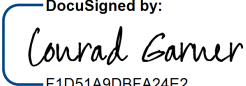
**APPROVED AS TO FORM:**

By:   
D47F525AE463483...  
Sky Woodruff  
City Attorney

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

**BUYER:**

Ensemble Investments, LLC,  
a California corporation

By:   
Name: Conrad Garner  
Title: SVP

5253568.1

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(367 MARINA BOULEVARD, SOUTH SAN FRANCISCO, CALIFORNIA)

**Attachment 1**

**EXHIBIT C-REVISED**

**Master Development Schedule—Updated December 20, 2022, 2022**

| Activity                                                                   | Milestones                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Submit application for Precise Plan                                        | No later than May 1, 2022                                                                                                                                                                                                                        |
| Receive Development Agreement Approval (first reading)                     | No later than <u>2 weeks prior to Closing Date December 16, 2022</u>                                                                                                                                                                             |
| Receive Entitlement Approval                                               | No later than <u>2 weeks prior to Closing Date December 16, 2022</u>                                                                                                                                                                             |
| Closing of Escrow                                                          | No later than <u>six (6) months after the Seller concludes the statutory process outlined in Government Code section 54220 et seq or nine (9) months after such process if Seller elects to extend pursuant to Section 5.1 December 31, 2022</u> |
| Submit application for Building Permit                                     | No later than <u>12 months after Closing Date December 31, 2023.</u>                                                                                                                                                                             |
| Delivery of Proof of an Approved Construction Loan from a Reputable Lender | Within 18 months of submitting for Building Permit, <u>but no later than June 30, 2025.</u>                                                                                                                                                      |
| Delivery of a Final Construction Contract                                  | Within 18 months of submitting for Building Permit, <u>but no later than June 30, 2025.</u>                                                                                                                                                      |
| Construction Commences                                                     | Within 19 months of submitting for building permit, <u>but no later than July 31, 2025.</u>                                                                                                                                                      |
| Substantial Completion of Construction                                     | Within 36 months of construction commencement; targeted for <u>September 2027 (26-month schedule), but no later than June 2028 (35-month schedule).</u>                                                                                          |
| Estimated Opening of hotel                                                 | Targeted for <u>2 months after Substantial Completion of Construction November 2027, but no later than August 2028.</u>                                                                                                                          |

\*Note that all target dates are subject to automatic extension for delays due to factors beyond Developer's reasonable control in accordance with the force majeure provisions of the Development Agreement.

## **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is entered into as of ~~December 10~~, 20<sup>21</sup> (the "Effective Date"), by and between the City of South San Francisco, a municipal corporation, ("Seller" or "City") and Ensemble Investments, LLC, a California Limited Liability Company ("Buyer"). Seller and Buyer are collectively referred to herein as the "Parties."

### **RECITALS**

A. Seller is the owner of certain real property located in the City of South San Francisco California, also known as San Mateo County Assessor's Parcel Number: 015-010-970 and more particularly described in the legal description and shown as Parcel 6 on Parcel Map 17-0002 recorded on September 25, 2017, both attached hereto and incorporated herein as Exhibit A (the "Property").

B. On March 23, 2011, the City Council approved the Oyster Point Specific Plan and certified the Oyster Point Specific Plan and Phase 1 Project Environmental Impact Report which, among other things, planned for and analyzed the potential environmental impacts of developing a new full-service hotel with up to 350 rooms and approximately 40,000 square feet of retail uses on the Property ("Project").

C. A Disposition and Development Agreement was executed on March 23, 2011, between Oyster Point Ventures, LLC, the South San Francisco Redevelopment Agency, and the City of South San Francisco ("DDA") for the master development of Oyster Point through a multi-phased project, which included the potential development of a hotel on an approximately 4.7 acre portion of the Property known as the "Hotel Site," among other things, the DDA requires Oyster Point Development, LLC, to perform certain site work, grading, and installation of infrastructure to prepare the Hotel Site for development.

D. In 2017, the City solicited proposals from qualified hotel developers through an RFQ/RFP process, and upon review of the responsive proposals, the City's Joint Housing Standing Committee made a recommendation at its December 11, 2017, meeting that the City enter into an Exclusive Negotiating Rights Agreement ("Original ENRA") with Buyer for the development of a new full-service hotel on the Hotel Site. The City approved the Original ENRA with Buyer on April 11, 2018 and the Parties negotiated terms and conditions of the purchase and development of the Hotel Site pursuant to that Original ENRA. As part of the Original ENRA, Buyer previously deposited \$100,000 to the City ("ENRA Deposit") to be held in an interest bearing account of the City and credited towards Buyer's purchase price of the Hotel Site. The Original ENRA was subsequently amended by the First Amendment to the Exclusive Negotiating Rights Agreement and the term of the ENRA was extended three additional times through subsequent amendments (the four amendments to the ENRA together with the Original ENRA, are collectively, referred to herein as the "ENRA"). The ENRA Deposit with any and all interest accrued thereon, will be applied towards the Purchase Price at Closing (as defined in Section 2.2 below).

E. Seller has verified to its reasonable satisfaction that the Buyer is or, upon execution of this Agreement, will be financially capable to prepare and process entitlements for the Project.

F. Seller and Buyer have entered into a separate agreement to address the soft costs associated with certain design work the Seller has requested Buyer to perform in connection with the future development of a ferry terminal located on a Seller-owned property adjacent to the Hotel Site, commonly known as and referred to herein as the "Spit Property" (the "Cost-Sharing Agreement"). Buyer has paid One Hundred and Fifty Thousand Dollars (\$150,000) in consulting services for the initial soft costs associated with the design and development of the Spit Property (the "Spit Reserve Funds"). The Spit Reserve Funds will not be applied towards the Purchase Price at Closing, nor paid to Seller in the event this Agreement is terminated for any reason. Buyer has provided all documents created by the consultant to City and City has accepted Buyer's performance under the Cost-Sharing Agreement as complete and satisfactory.

G. Buyer agrees to purchase the Property, and Seller agrees to sell the Property to Buyer, subject to the terms and conditions memorialized in this Agreement.

H. In connection with this Agreement, Buyer and Seller intend to negotiate a separate development agreement to address the financing and construction of the Project (the "Development Agreement").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the "Purchase Price") is One Million dollars (\$1,000,000). The Purchase Price shall be paid in cash or other immediately available funds at the Closing to the Seller in accordance with Section 5.5(b). The Seller will retain the ENRA Deposit of \$100,000 and at Closing, the ENRA Deposit with any and all interest accrued, will be applied towards the Purchase Price.

3. ESCROW.

3.1 Escrow Account. Seller has opened an interest-bearing escrow account (the "Escrow") maintained by Chicago Title Insurance Company, 455 Market Street, #2100, San Francisco, CA 94105 (the "Escrow Holder" and the "Title Company"), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within two (2) business days after the Effective Date, the Parties will deposit into Escrow this fully executed Agreement, or executed counterparts hereto. The date such fully executed version of this Agreement is received by Escrow Holder will be deemed the "Opening of Escrow" and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 Buyer's Deposit. Within three (3) business days after the Opening of Escrow, the Buyer shall deposit Thirty Thousand dollars (\$30,000) in Escrow ("Initial Deposit") accounting for 3% of the total Purchase Price. If the Due Diligence Contingency Period (as defined in Section 5.2(a) below) is extended pursuant to Section 5.2(a), Buyer shall deposit an additional Fifty Thousand dollars (\$50,000) in Escrow (the "Additional Deposit") accounting for 5% of the total Purchase Price. The Initial Deposit and Additional Deposit are sometimes collectively referred to herein as the "Deposits."

3.4 Satisfaction of Due Diligence Contingency. Buyer shall have the right, in its sole discretion, to terminate this Agreement for any reason prior to the expiration of the Due Diligence Contingency Period (as defined in Section 5.2) and receive a refund of the Deposits. Buyer hereby agrees to provide written notice to Seller prior to the expiration of the Due Diligence Contingency Period if Buyer disapproves any due diligence items or approves all due diligence items ("Approval Notice"). If Buyer disapproves any items through the delivery of the Approval Notice to Seller before 5:00 p.m. on the last day of the Due Diligence Contingency Period, this Agreement shall terminate, and all amounts deposited by Buyer into Escrow (except the ENRA Deposit and the Independent Consideration referenced below), together with interest thereon, if any, will be returned to Buyer, and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. If Buyer fails to timely deliver the Approval Notice to Seller, it will be conclusively presumed that Buyer has approved all such items, matters or documents.

3.5 Independent Consideration. As independent consideration for Seller's entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of One Thousand dollars (\$1,000) to Seller through Escrow ("Independent Consideration"). In the event that Buyer terminates this Agreement in accordance with Section 3.4 above, Seller shall retain the Independent Consideration; in the event that Buyer does not terminate this Agreement as aforesaid, the Independent Consideration shall be applied to the Purchase Price at Closing.

#### 4. DILIGENCE AND TITLE REVIEW.

4.1 Condition of Title/Preliminary Title Report. Escrow Holder shall deliver a Preliminary Title Report for the Property (the "Preliminary Report") to Buyer within three (3) days after the Opening of Escrow. During the Due Diligence Contingency Period, and no later than ten (10) business days prior to expiration of the Due Diligence Contingency Period, Buyer shall deliver to Seller written notice (the "Title Objection Notice") of its objections to matters identified in the Title Report ("Disapproved Exceptions"). Buyer's failure to timely deliver the Title Objection Notice shall be deemed Buyer's disapproval of the Title Report and Buyer's election to terminate this Agreement, whereupon the Deposits and all interest accrued thereon shall immediately be released by Escrow Holder to Buyer. Seller shall have seven (7) business days after receipt of Buyer's Title Objection Notice to notify Buyer in writing ("Seller's Title Notice") that either, (a)

Seller will cure or remove such Disapproved Exceptions from title prior to Closing (or cause the Title Company to issue an endorsement reasonably satisfactory to Buyer insuring Buyer as to such matter), or (b) Seller elects not to cure or cause the Disapproved Exceptions to be removed. If Seller refuses to cure or remove any Disapproved Exceptions, then, within five (5) business days after Buyer's receipt of Seller's Title Notice or prior to the expiration date of the Due Diligence Contingency Period, whichever is earlier, Buyer may either (a) notify Seller in writing that it has elected to waive the Disapproved Exceptions and proceed with the purchase contemplated herein, or (b) terminate this Agreement, whereupon, the Deposits and all interest accrued thereon shall immediately be released by Escrow Holder to Buyer, and neither Party shall have any further obligation or liability to the other with respect to the transaction contemplated by this Agreement, except for those that expressly survive termination.

Notwithstanding anything to the contrary contained above or elsewhere herein, Seller shall be obligated to cause all deeds of trust, tax liens, abstracts of judgments, mechanics' liens, or similar monetary liens or encumbrances which require any monetary payment to be removed or released from title to the Property, including those secured by leasehold or subleasehold estates, on or before the Closing, except for non-delinquent real property taxes and assessments (collectively, "Monetary Liens"). For the purpose of the foregoing, any monetary obligations, costs, or payments associated with the Property owner's obligations pursuant to the Postclosure Monitoring and Maintenance Plan dated September 8, 2017 and the San Francisco Regional Water Quality Control Board Order No. 00-0146 issued on June 21, 2000, as each has been amended from time to time shall not be considered Monetary Liens. If Seller elects to cure or remove any Disapproved Exceptions, but fails to do so prior to Closing, then Buyer shall have the right to terminate this Agreement and to receive full reimbursement of the Deposits, and may pursue other remedies available to it under the Agreement. For purposes of this Agreement, any title matters approved by Buyer (or for which Buyer has withdrawn an objection) pursuant to this Section 4.1 are referred to herein as the "Permitted Exceptions." In no event shall the Permitted Exceptions include any Monetary Liens.

(a) Due Diligence Materials. Seller shall provide to Buyer copies of all actually known and reasonably available documents relating to the ownership and operation of the Property, including but not limited to plans, permits, maps, surveys, agreements and reports (environmental, structural, mechanical, engineering, soils, grading and geotechnical) that Seller has to its actual knowledge within its possession or control (collectively, the "Due Diligence Materials") not later than fourteen (14) calendar days following the execution and delivery of this Agreement, or as soon as practicable thereafter. The term Due Diligence Materials does not include Environmental Documents (defined below). For the purposes of this Agreement, "Seller's actual knowledge" or information "actually known" by Seller means the current, actual knowledge of the City Manager, Public Works Director, and City Engineer. Nothing in this Section 4.1(a) shall excuse or otherwise diminish Seller's obligation to provide any disclosures regarding natural hazards or environmental conditions otherwise required for the proposed property transfer by any applicable laws, statutes, ordinances, rules, regulations, permits, certificates, judgments, decisions, decrees or orders of any governmental authority ("Applicable Laws").

4.2 Environmental Conditions and Environmental Documents. Seller has disclosed and hereby discloses to Buyer that the Property lies within an area that was formerly operated as a landfill and as such, materials, including solid and liquid waste, municipal waste, construction

materials, debris, and Hazardous Materials (collectively, “Landfill Materials”) are present at, on, under and emanating to and from the Property. In addition, the presence and breakdown of Landfill Materials at, under and adjacent to the Property has led and will continue to lead to, among other conditions: (a) the existence and generation of methane, other landfill gases, and other volatile organic compounds at, on, under and emanating to and from the Property; and (b) the settlement, including differential settlement, of the Property and adjacent areas (collectively, “Landfill Conditions”).

The former landfill on the Property is regulated by, among other things, Order No. 00-46 issued by the San Francisco Regional Water Quality Control Board (“Water Board”) to the Seller on June 21, 2000 (“Order No. 00-46” or “Order”). The Order imposes closure and post-closure requirements, including performing sampling, analyses, and observations of groundwater, leachate, and surface water and submitting the results in semiannual and annual reports to the Water Board. A Final Closure Plan (“Final Closure Plan”) and a Postclosure Maintenance and Monitoring Plan (“Postclosure Plan”) (collectively, the “Closure Plans”), each dated September 8, 2017, were prepared pursuant to the Order. The former landfill area, including the Property, and the Landfill Materials will continue to be subject to the Order and the Closure Plans, as each of these documents may be amended from time to time with the approval of the Water Board. The Closure Plans assign certain ongoing obligations to the Seller and certain obligations to the future owner of the Property, as identified in Table 1 (the “Postclosure Responsibility Matrix”) of the Postclosure Plan<sup>1</sup>, which is set forth herein as Exhibit E.

Additional documents relating to environmental conditions, activities, and requirements at the Property, including investigation, remediation, mitigation, operation and maintenance measures, are available on the Water Board’s Geotracker database (including at the following link: [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=L10009323371](https://geotracker.waterboards.ca.gov/profile_report?global_id=L10009323371)), as well as from other governmental entities, such as the California Department of Toxic Substances Control, the State Water Resources Control Board, and the County of San Mateo (collectively, the “Environmental Documents”). The Landfill Materials, Landfill Conditions, and all conditions identified or otherwise referenced in the Environmental Documents as of the Closing Date, are collectively referred to herein as the “Pre-Existing Property Conditions.”

4.3 Notice Pursuant to Health & Safety Code Section 25359.7. California Health & Safety Code Section 25359.7 requires an owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property to, prior to the sale of the real property by that owner, provide written notice of that condition to the buyer. In accordance with that section, Seller hereby notifies Buyer that hazardous materials, including hazardous substances, have come to be located on and beneath the Property, including Landfill Materials and Landfill Conditions, and other hazardous materials as set forth in the Environmental Documents.

#### 4.4 Inspection of Property; Access Rights.

(a) During the Due Diligence Contingency Period, Buyer or its agents shall be permitted to enter onto the Property to perform inspections and reasonable testing of the Property,

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<sup>1</sup> See Pages 8-10 of the Postclosure Plan.

including without limitation, soil samples, boring, and backhoe pits in order to assess the condition of the subsurface of the Property or other similar intrusive or invasive action on or under the Property. All physical inspections must be performed in accordance with this Agreement and coordinated with Seller's representative. Developer agrees to notify the City seventy-two (72) hours in advance of its intention to enter the Property.

(b) Pursuant to the Bay Conservation and Development Commission ("BCDC") Permit No. 2017.007.00, originally issued on April 27, 2018 and amended on July 30, 2021 as Amendment No. 2, and any amendments thereto (the "BCDC Permit") attached hereto and incorporated herein as Exhibit B, Developer shall be responsible for construction of the temporary north-south Bay Trail connection no later than 6 months following the completion of Phase IC, with the construction of a 12-foot-wide accessible interim path that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the Hotel Site, to the southern sidewalk to Marina Boulevard. Seller agrees to provide prompt written notice to Buyer no less than thirty days in advance of the anticipated completion date for the Phase IC work. Prior to Closing, Buyer or its agents shall be entitled to enter onto the Property to complete construction of the temporary Bay Trail improvements subject to and consistent with all applicable provisions of the BCDC Permit, and to diligently process any permits required to install the temporary trail improvement. Access to the Property for such construction shall be coordinated with Seller's representative.

(c) In exercising its rights or performing any work under this Section 4.4, Buyer hereby agrees to indemnify and hold Seller harmless for any claims, actions, losses, liabilities, damages, costs, and expenses ("Access Claims and Losses") incurred, suffered by or claimed against Seller by reason of Buyer's entry onto or in connection with Buyer's inspection and testing of the Property by Buyer and/or its agents, employees, or contractors ; provided, however, that Buyer shall have no obligations to indemnify, defend, protect and hold harmless Seller for Access Claims and Losses to the extent resulting from the negligence or willful misconduct of Seller or Buyer's mere discovery of pre-existing adverse physical conditions in, on, or under the Property.

#### 4.5 Development Agreement, Preliminary Pro Forma and Project Entitlements.

(a) Buyer and Seller agree to negotiate diligently and in good faith the terms of the Development Agreement on such terms set forth in the Development Agreement term sheet attached hereto as Exhibit C and such other terms as shall be acceptable to each party in its sole discretion. Buyer and Seller will also work diligently and in good faith to process all discretionary entitlements for the Project concurrently with the negotiation of the Development Agreement. Buyer will use good faith efforts to submit an entitlement application and seek City Council approval of the Development Agreement and all discretionary entitlements for the Project prior to the Closing Date (as defined in Section 5.1 below). Notwithstanding anything else to the contrary, if the Buyer fails to submit a precise plan and associated entitlement application by May 1, 2022, then the Seller, in its sole discretion, may elect to terminate this Agreement and may retain all Deposits paid pursuant to this Agreement. In the event that Seller exercises its right to terminate pursuant to this provision, neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. The Parties acknowledge that the second reading of the ordinance approving the Development Agreement may occur after Closing, in which case the Development Agreement shall be executed and recorded post-Closing. However,

if the Development Agreement has been fully approved by the City Council prior to December 31, 2022, then an executed copy of the Development Agreement will be deposited into escrow and recorded by the San Mateo County recorder concurrently with the Close of Escrow.

(b) Buyer will submit to the Seller documentation that reasonably demonstrates to the City's reasonable satisfaction the financial feasibility of Buyer's proposed development of the Project at least seven (7) business days prior to expiration of the Due Diligence Contingency Period.

(c) Seller has no legal obligation to grant any approvals or authorizations for the Development Agreement and discretionary entitlements for the Project until the Development Agreement and discretionary entitlements have been approved by the City Council. Such approvals, and any future approvals required as part of the entitlement process, are subject to completion of environmental review by City in accordance with the California Environmental Quality Act, and City shall not take any discretionary actions committing it to a particular course of action in connection with the Project until City has completed, considered and certified/approved any additionally required CEQA environmental review documents.

## 5. CLOSING, CONDITIONS OF CLOSING, AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. The escrow for conveyance of the Property shall close ("Close of Escrow" or "Closing") within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Buyer's Closing Conditions (as defined in Section 5.2 below) and all of the Seller's Closing Conditions (as defined in Section 5.3 below), which shall occur no later than December 31, 2022, or such earlier date that Buyer may specify to Seller with thirty (30) days prior written notice (the "Closing Date").

5.2 Buyer's Conditions to Closing. Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions ("Buyer's Closing Conditions") or Buyer's written waiver thereof (in Buyer's sole discretion) on or before the Closing Date:

(a) Buyer has approved the condition of the Property. Buyer will have thirty (30) calendar days from receipt of the Due Diligence Materials or forty-five (45) calendar days following the Effective Date, whichever is earlier (the "Due Diligence Contingency Period") to review the suitability of the Property for Buyer's Project, including to investigate title and to conduct any feasibility, economic, environmental, or other such investigations, studies, and tests with respect to the Property as Buyer deems necessary or appropriate, and to approve or disapprove of such matters in Buyer's sole and absolute discretion. Buyer may request one (1) thirty-day extension of the Due Diligence Contingency Period and such extension will be granted if (i) Buyer has paid Buyer's Additional Deposit and (ii) Buyer has made reasonable efforts in Seller's reasonable determination to pursue all matters identified in Section 4 which must be completed prior to the expiration of the Due Diligence Contingency Period. Buyer must notify Seller of its desire to extend, in writing, at least seven (7) days before the end of the initial Due Diligence Contingency Period.

(b) Seller shall have delivered to Buyer or Escrow Holder all of the items required to be delivered to Buyer pursuant to this Agreement, including, but not limited to, those provided for in Section 5.5 (a).

(c) Seller or its City Council shall have approved all discretionary entitlements necessary to construct the Project, including the first reading of an ordinance approving the Development Agreement.

(d) Seller has performed all obligations to be performed by Seller as of the Closing Date pursuant to this Agreement.

(e) Seller's representations and warranties herein are true and correct in all material respects as of the Closing Date.

(f) The Title Company is irrevocably committed to issue an ALTA standard coverage title insurance policy to Buyer, effective as of the Closing Date, insuring fee simple title to the Property vested in Buyer in the full amount of the Purchase Price and subject only to the Permitted Exceptions (the "Title Policy").

If any of the Buyer's Closing Conditions shall not have been satisfied on or before the Closing Date, then Buyer shall have the right to either (i) waive any such unmet Buyer's Closing Conditions and proceed with Closing, or (ii) elect to not proceed with Closing by giving written notice to Seller of such election prior to the Closing Date, in which case the Deposits shall be immediately released to Seller and this Agreement shall terminate; provided, however, if such Buyer's Closing Conditions have not been satisfied due to a default on the part of the Seller, the Deposits shall be returned to Buyer and Buyer shall also have its rights under Section 7.1.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions ("Seller's Closing Conditions") or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Closing Date:

(a) Buyer shall have delivered to Seller or Escrow Holder all of the items required to be delivered to Seller pursuant to this Agreement, including but not limited to, those provided for in Section 5.5(b).

(b) Buyer has delivered an approved franchise agreement for the Project or an alternative acceptable to the Seller.

(c) Buyer has submitted to Seller a construction schedule for the Project, which is consistent with the post-closing milestones in the Development Agreement, including commencement of construction and substantial completion of the Project, and confirms to the City's reasonable satisfaction the feasibility of Buyer's development of the Project in accordance with the post-closing milestones in the Development Agreement.

(d) Buyer has submitted a final pro forma including pro forma financing terms that confirms to the Seller's reasonable satisfaction the financial feasibility of the Buyer's development of the Project.

(e) Buyer has completed construction of the temporary north-south Bay Trail connection (if required, assuming timely completion of the Phase 1C work) and has incorporated a permanent north-south Bay Trail connection into the entitlements for the Project, as identified in BCDC Permit 2017.007.00, at Buyer's expense and in accordance with the BCDC Permit or any amendments thereto, unless (i) BCDC has waived, released, or otherwise modified the BCDC Permit conditions such that the temporary or permanent trail, as applicable, is no longer required, or (ii) provided an extension of time for construction of the permanent north-south Bay Trail connection. Such trail construction shall be completed two (2) months prior to the deadline imposed by BCDC, as may be amended. Such Bay Trail connections shall comply with the Americans with Disabilities Act and any other applicable standards, requirements, or amendments.

(f) Buyer has taken all steps necessary and required under the Order No. 00-46 and the Closure Plans, to the City's reasonable satisfaction, to assume the applicable obligations of the owner or developer of the Property under the Order No. 00-46 and the Closure Plans respectively, and provided written assurance to Seller that Buyer is unequivocally prepared to assume and perform such obligations, including to the extent that each such document may be amended from time to time with approval of the Water Board. As to Order No. 00-46, such written assurance shall confirm that the date of Closing is the specific date for the transfer of responsibility for the obligations identified in Order No. 00-46 as to the Property. In furtherance of the foregoing condition as to Order No. 00-46, the Buyer shall cooperate with the Seller to notify the Water Board to request a transfer of responsibility of Order No. 00-46 as to the Property, including providing the Seller with the Buyer's full legal name, address, and telephone number of the persons responsible for contact with the Water Board.

(g) Buyer has entered into a binding voluntary oversight agreement with the Water Board (i) pursuant to which the Water Board will oversee Buyer's compliance with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property, and (ii) confirming that with respect to such requirements, the Buyer is the party primarily responsible for such compliance. It is the goal of the parties that, following the Closing Date, Buyer shall be solely responsible to perform, at its sole cost and expense, the compliance activities referenced in (i) and (ii) above. The Parties acknowledge that the City is liable for any violations of Order No. 00-46 or Sections 13267 and 13263 of the California Water Code relating to the Property up to the Closing Date and that the Buyer is liable for any such violations from and following the Closing Date.

(h) Buyer has performed all obligations to be performed by Buyer pursuant to this Agreement before Closing Date.

(i) Seller has secured, at reasonable cost, insurance or a commitment for insurance that covers or substantially offsets, in Seller's reasonable discretion, the risks and liabilities that Seller will retain or to which Seller may be exposed pursuant to this Agreement following the Closing Date. Seller shall notify Buyer in writing no later than ninety (90) calendar days after the Effective Date ("Environmental Insurance Contingency Period") that this condition has either (i) been satisfied or waived by Seller; or (ii) not been satisfied or waived by Seller and Seller has elected to not proceed with Closing, in which case the Deposits shall be immediately released to Buyer and this Agreement shall terminate. If Seller does not indicate its election prior to the expiration

of the Environmental Insurance Contingency Period, Seller shall have been deemed to have waived this condition.

(j) Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

(k) Seller has approved all discretionary entitlements for the Project, including the first reading of an ordinance approving a Development Agreement.

Buyer will deliver or complete items (c), (d), (e), (f) and (g) at least seven (7) business days prior to Closing. If any of the Seller's Closing Conditions shall not have been satisfied on or before the Closing Date as a result of a breach or default by Buyer, then Seller shall have its rights under Section 7.2. Notwithstanding the foregoing or anything contained herein to the contrary, if Buyer has failed to satisfy the condition contained in Section 5.3(e) above by the date specified by BCDC or if Seller's Closing Conditions have not otherwise been satisfied on or before December 31, 2022, the Seller may, in its sole discretion, immediately terminate this Agreement. For the avoidance of doubt, the Parties acknowledge that the second reading of the ordinance approving the Development Agreement may occur after Closing, in which case the Development Agreement shall be executed and recorded post-Closing. However, if the Development Agreement has been fully approved by the City Council prior to December 31, 2022, then an executed copy of the Development Agreement will be deposited into escrow and recorded concurrently with the Close of Escrow.

5.4 Conveyance of Title. Seller will deliver marketable fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions. As provided in Section 6.3 and further herein, the Property will be conveyed by Seller to Buyer in an "as is" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by Section 13); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge or its obligations under Section 10.

#### 5.5 Deliveries at Closing.

(a) Deliveries by Seller. Prior to Closing, Seller shall deposit the following into the Escrow: (i) one (1) original executed and acknowledged grant deed, substantially in the form attached hereto as Exhibit D ("Grant Deed"); ; (ii) one (1) duly executed affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "Non-Foreign Affidavit"); (iii) one (1) duly executed California Franchise Tax Board form 590 (the "California Certificate") to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131, and (vi) such other instruments, funds, and documents as required under the terms of this Agreement or reasonably requested by Escrow Holder, including any such affidavits necessary to issue the Title Policy.

(b) Deliveries by Buyer. Prior to Closing, Buyer shall deposit the following into the Escrow: (i) no less than one (1) business day prior to the Close of Escrow, Buyer shall deposit into Escrow immediately available funds in the amount, which together with the Independent

Consideration, the Deposits, and the ENRA Deposit is equal to the Purchase Price as adjusted by any prorations between the Parties; (ii) one (1) original executed Preliminary Change of Ownership Report for the Property; (iii) the escrow fees and recording fees; (iv) the cost of the Title Policy; and (v) such other instruments, funds, and documents as required under the terms of this Agreement or reasonably requested by Escrow Holder.

(c) Closing. Upon Closing, Escrow Holder shall: (i) record the Grant Deed; (ii) disburse to Seller the Purchase Price, less Seller's share of any fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate and the original recorded Grant Deed; (iv) pay any commissions and other expenses payable through Escrow; and (v) distribute to itself the payment of Escrow fees and expenses required hereunder.

(d) Closing Costs. Buyer will pay all Escrow fees (including the costs of preparing documents and instruments), and recording fees. Buyer will also pay title insurance and title report costs. Seller will pay all transfer taxes and governmental conveyance fees, where applicable.

(e) Pro-Rations. At the Close of Escrow, the Escrow Holder shall make the following prorations: (i) property taxes will be prorated as of the Closing Date based upon the most recent tax bill available, including any property taxes which may be assessed after the Closing Date but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered. Seller does not pay ad valorem taxes.

## 6. REPRESENTATIONS AND WARRANTIES.

6.1 Seller's General Representations and Warranties. In addition to the representations and warranties of Seller contained in Section 6.2 below pertaining to Seller's Environmental Representations and Warranties (which are Seller's exclusive representations and warranties pertaining to the environmental issues at or associated with the Property), Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing Date (subject to any knowledge qualifications set forth therein) provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 3.4 pertaining to return of funds deposited into Escrow will apply. Seller's representations and warranties under this Section 6.1 do not apply to any matter addressed, directly or indirectly, in Section 6.2 below.

(a) Authority. Seller is a municipal corporation, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as

disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force.

(c) There are no agreements to the Seller's actual knowledge, affecting the Property except those which have been disclosed by Seller in writing.

(d) There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to Seller's actual knowledge based on reasonable investigation, threatened against Seller, relating to the Property or relating to or arising out of the ownership, management, or operation of the Property, in any court or before any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality, and Seller has received no notice thereof except those which have been disclosed by Seller in writing.

(e) Seller has delivered to Buyer all of the documents and materials required to be delivered by Seller pursuant to Section 4.1, and none of the documents and materials delivered by Seller to Buyer pursuant to Section 4.1 contain any material misstatements or omissions to the Seller's actual knowledge .

The foregoing representations and warranties shall survive Close of Escrow of this Agreement and shall not be deemed merged into the deed upon Closing.

6.2 Seller's Environmental Representations and Warranties. Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.2 are each true and correct as of the Closing Date (subject to any knowledge qualifications set forth therein) provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 3.4 pertaining to return of funds deposited into Escrow will apply.

(a) To Seller's actual knowledge, there are no Hazardous Materials (as defined by Section 13) or environmental contamination located on the Property in violation of any Environmental Laws (as defined by Section 13), and no pending or threatened proceeding or notices by any governmental authority with respect to the presence, suspected presence, or release of Hazardous Materials on the Property or the migration thereof from or to other property, except as such information has been previously disclosed by Seller in writing or is otherwise made available or reasonably known to Buyer, including, but not limited to, information contained in the Environmental Documents.

(b) To Seller's actual knowledge, the Due Diligence Materials and the Environmental Documents are the only documents that identify the Pre-Existing Property Conditions (as defined in Section 6.3 below).

(c) Seller has disclosed the presence of landfill materials and certain Hazardous Materials on the Property to Buyer, which are subject to the terms and conditions of the Postclosure Plan and Order No. 00-46.

Other than the express representations and warranties of Seller specifically set forth in Section 6.1 and Section 6.2 of this Agreement, Seller makes no representations or warranties of any kind, express or implied, as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) Pre-Existing Property Conditions, (iv) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (v) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (vi) except as otherwise provided in this Agreement, the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vii) except as otherwise specifically provided in this Agreement, the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (viii) except as otherwise specifically provided in this Agreement, the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property, (ix) the quality of any labor and materials used in any improvements on the Property, (x) the condition of title to the Property, (xi) the leases, service contracts, or other agreements affecting the Property, or (xii) the economics of the operation of the Property.

6.3 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.3 are each true as of the Effective Date, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing.

(a) Buyer is a California Limited Liability Company. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute, and has the financial means and expertise to complete all of Buyer's obligations under this Agreement.

6.4 Property Sold, "AS IS". Buyer specifically acknowledges that the Seller is selling the Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that, subject only to Seller's specific representations and warranties in Section 6.1 and Section 6.2 of this Agreement, Buyer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, or its employees, appointed or elected officials, agents, attorneys, contractors or brokers as to any matters concerning the Property. Buyer is a sophisticated purchaser and its consultants have reviewed or have had the opportunity to review the Due Diligence Materials and Environmental Documents and to perform due diligence relating to the Property, the Pre-Existing Property Conditions, the landfill, and Landfill Materials to the full extent desired by Buyer, in its sole discretion. Any decision by Buyer to acquire the Property is based solely on

Buyer's own due diligence and evaluation of the Pre-Existing Property Conditions and the limited representations specifically set forth in Section 6.1 and 6.2 of this Agreement by Seller.

7. DEFAULT, REMEDIES, TERMINATION.

7.1 In the event of a breach or default under this Agreement by Seller, which is not cured within ten (10) days (such longer period as may be reasonably required to cure such default) after written notice, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance until Seller is able to perform with the understanding that such extension cannot extend beyond December 31, 2022; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer (including the Deposits), reserving all other rights and remedies available to it under this Agreement or otherwise at law or in equity, including the right to collect costs and damages for such breach from Seller .

7.2 IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER WHICH IS NOT CURED WITHIN TEN (10) DAYS (OR SUCH LONGER PERIOD AS MAY BE REASONABLY REQUIRED TO CURE SUCH DEFAULT) AFTER WRITTEN NOTICE AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER MAY ELECT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND/OR MAY RETAIN THE DEPOSITS AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, THE DEPOSITS REPRESENT A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND ARE NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ.

IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.

DS  
LB

Buyer's Initials

DS  
MF

Seller's Initials

8. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the procurement of the Property or negotiation of this Agreement. Each party shall indemnify, hold harmless and defend the other party from any and all claims, actions and liability for any breach of the party's respective representation, and any commission, finder's fee, or similar charges arising out of the transactions contemplated by this Agreement.

9. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other. No permitted assignment of any of

the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement. Notwithstanding any provision hereof, Buyer may assign this Agreement without the consent of Seller to one or more entities controlled by, or under common control with, or owned in whole or in part by Buyer, provided, Buyer shall not be released from its obligations under this Agreement. As used in this subsection, "controlled" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities, partnership interest, contracts (other than those that purport to transfer Buyer's interest to a third party not specifically identified in this subsection) or otherwise.

## 10. INDEMNIFICATION.

10.1 Indemnification by Seller. Except for the Claims (as defined below) released by Buyer pursuant to Section 11.1, Seller agrees to the fullest extent allowed by law to indemnify, protect, defend (with counsel satisfactory to Buyer), and hold Buyer and its officers, directors, managers, members, employees, agents, contractors, subcontractors, consultants, invitees, or licensees acting on behalf of Buyer (collectively, "Buyer Indemnitees") harmless from and against any and all Claims suffered by Buyer Indemnitees, to the extent caused by:

(a) Any material misrepresentation or breach of warranty or covenant made by Seller in this Agreement, provided that Seller's obligations under this Section 10.1 shall not apply to any misrepresentation or breach of warranty or covenant actually known to and waived by Buyer prior to Closing;

(b) Claims brought by any third party to the extent caused by the Pre-Existing Property Conditions; provided, however, Seller's obligations hereunder shall not apply to the extent that such third party claims are caused by the acts or negligent omissions of Buyer or any Buyer Indemnitee, including without limitation: (i) Buyer's design, construction, operation, use, and/or maintenance of the Project; (ii) Buyer's performance of or failure to perform Buyer's Post-Closing Mitigation Measures (as defined in Section 14.1 below); (iii) Buyer's design, construction, operation, use, and/or maintenance of any of Buyer's Post-Closing Mitigation Measures; (iv) Buyer's failure to install, operate, maintain or upgrade Vapor Intrusion Mitigation System ("VIMS")/Methane Mitigation System ("MMS") in accordance with Best Management Practices (for the purposes of this Agreement "Best Management Practices" means methods that are identified in the conditions of approval for the Project imposed pursuant to the entitlement process and during the plan check process prior to issuance of building permits) or as required by Applicable Law, including in response to changed, unexpected, or unanticipated conditions at the Project; (v) Buyer's breach of this Agreement; and (vi) failure by Buyer to provide any notice, disclosure or other information required by Applicable Laws in connection with the presence or potential presence of Pre-Existing Property Conditions at or otherwise relating to the Project, provided, however, that Seller's obligations to Buyer Indemnitees under this Section 10.1(b) shall not be excused by the mere discovery by a Buyer Indemnitee of a Pre-Existing Property Condition; and

(c) Claims to the extent caused by Seller's: (i) violation of Applicable Laws pertaining to the Pre-Existing Property Conditions from and after the Closing Date; and (ii) performance of or failure to perform Seller's Post-Closing Mitigation Measures from and after the Closing Date.

Notwithstanding anything to the contrary herein, Seller's obligations under this Section 10.1 shall not apply to any Claims for any alleged lost profits, lost opportunity, or alleged consequential, speculative, contingent or punitive damages.

10.2 Indemnification by Buyer. Except for the Claims released by Seller pursuant to Section 11.2, Buyer agrees to the fullest extent allowed by law, to indemnify, protect, defend (with counsel satisfactory to Seller), and hold Seller (and its elected and appointed officers, officials, directors, legislative body members, managers, employees, consultants, contractors, subcontractors, attorneys, agents, invitees, and/or licensees acting on behalf of Seller; collectively "Seller Indemnitees") harmless from and against any and all Claims (as defined in Section 11.1(a)) suffered by Seller Indemnitees, at any time or times after the Closing Date, to the extent caused by:

(a) Any material misrepresentation or breach of warranty or covenant made by Buyer in this Agreement, provided that Buyer's obligations under this Section 10.2 shall not apply to any misrepresentation or breach of warranty or covenant actually known to and waived by Seller prior to Closing;

(b) The acts or negligent omissions of Buyer or any Buyer Indemnitee, including without limitation: (i) Buyer's design, construction, operation, use, and/or maintenance of the Project; (ii) Buyer's performance or failure to perform Buyer's Post-Closing Mitigation Measures; (iii) Buyer's design, construction, operation, use, monitoring, and/or maintenance of any of Buyer's Post-Closing Mitigation Measures; and (iv) Buyer's failure to install, operate, maintain or upgrade VIMS/MMS as in accordance with Best Management Practices or required by Applicable Law, including in response to changed, unexpected, or unanticipated conditions at the Project.

Notwithstanding anything to the contrary herein, Buyer's obligations under this Section 10.2 shall not apply to any Claims for any alleged lost profits, lost opportunity, or alleged consequential, speculative, contingent or punitive damages.

The provisions of this Section 10 shall survive the Close of Escrow.

## 11. RELEASES.

### 11.1 By Buyer.

(a) Pre-Existing Property Conditions. Effective upon the Close of Escrow, except with respect to the representations and warranties of Seller under Section 6.1 and 6.2 of this Agreement and the indemnification obligations of Seller under Sections 8 and 10.1, Buyer waives releases, remises, acquits and forever discharges Seller (and its elected and appointed officers, officials, directors, legislative body members, managers, employees, attorneys, consultants, invitees, licensees, agents, and contractors and subcontractors acting on behalf of Seller) from any and all actions, causes of action, charges, claims, compensation, costs, damages, fees (including attorneys' fees and experts' fees), fines, demands, judgments, losses, orders, penalties, rights, and expenses of any kind or type, and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (collectively, "Claims"), which Buyer has or may have, now or in the future, on account of or in any way arising from or in connection with the Pre-Existing Property Conditions.

(b) **Buyer's Post-Closing Mitigation Measures.** Effective upon the Close of Escrow, Buyer waives, releases, remises, acquits and forever discharges Seller, and its officers, directors, legislative body members, managers, employees and agents, and contractors and subcontractors acting on behalf of Seller, from any and all Claims to the extent arising from or in connection with (a) Buyer's implementation of or failure to implement Buyer's Post-Closing Mitigation Measures (as described in Section 14.1), and (b) Buyer's failure to comply with Applicable Laws pertaining to the Pre-Existing Property Conditions and/or Buyer's Post-Closing Mitigation Measures.

(c) Buyer acknowledges that Buyer is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Effective upon the Close of Escrow, by initialing below, Buyer expressly waives the benefits of Section 1542 of the California Civil Code with respect to the foregoing releases:

Buyer's initials: \_\_\_\_\_

LB

11.2 By Seller. Effective upon the Close of Escrow, except with respect to the representations and warranties of Buyer under Section 6.3 of this Agreement and the indemnification obligations of Buyer under Sections 8 and 10.2, Seller waives, releases, remises, acquits and forever discharges Buyer, and its officers, directors, members, managers, employees and agents, consultants, invitees, licensees, and contractors and subcontractors acting on behalf of Buyer, from any and all Claims to the extent arising from or in connection with (a) Seller's implementation of or failure to implement Seller's Post-Closing Mitigation Measures (as described in Section 14.2), and (b) Seller's post-Closing failure to comply with Applicable Laws pertaining to the Pre-Existing Property Conditions and/or Seller's Post-Closing Mitigation Measures.

Seller acknowledges that Seller is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Effective upon the Close of Escrow, by initialing below, Seller expressly waives the benefits of Section 1542 of the California Civil Code with respect to the foregoing release:

Seller's initials:



The releases provided by Buyer and Seller pursuant to this Section 11 include releases for lost profits, lost opportunity, and consequential, speculative, contingent or punitive damages. This Section 11 shall survive the termination of this Agreement and the Close of Escrow.

12. **ADDITIONAL COSTS AND OBLIGATIONS OF BUYER.** Buyer acknowledges that development of the Project on a former landfill and the Pre-Existing Property Conditions will impact Buyer's construction and operation of the Project, including requiring enhanced or modified construction techniques, managing and accommodating the presence and potential presence of hazardous materials beneath the Property, and the design, installation, operation and maintenance of various mitigation systems, all of which will increase the cost of constructing and operating the Project. Buyer agrees that it shall be solely responsible for all such costs, including each of the following:

(a) **Additional Development Costs.** All additional development costs incurred or necessary due to the fact that development of the Project is occurring on a landfill and/or due to the presence or potential presence of Pre-Existing Property Conditions, such additional costs include the following types of requirements and costs:

- (1) More complex building foundation;
- (2) Additional geotechnical costs;
- (3) MMS design, installation, and maintenance;
- (4) VIMS design, installation, and maintenance;
- (5) Cap management and repair to the extent required in connection with Buyer's construction and operation of the Project;
- (6) Proper management and disposal of waste encountered during development;
- (7) Compliance with Applicable Laws, including compliance arising due to changes in Applicable Laws;
- (8) Delays due to discovery of unanticipated conditions;
- (9) Additional construction precautions due to the presence of hazardous or landfill materials;
- (10) Construction considerations due to existence of cap;
- (11) Compliance with requirements in the Closure Plans; and
- (12) Regulatory oversight of development activities.

(b) System Upgrades. Costs to install, operate, maintain and upgrade VIMS and MMS systems, including in response to changed, unexpected, or unanticipated conditions at the Project or Property.

Nothing in this Section shall be deemed or is intended to affect Seller's obligations under Section 10.1.

13. SELLER'S COVENANTS. From the Effective Date until the Closing Date, unless this Agreement is earlier terminated pursuant to the terms hereof:

13.1 At Seller's sole cost and expense, Seller shall maintain the Property and operate the Property in compliance with all Applicable Laws and governmental orders, including the Post-Closure Plan and Order No. 00-46, and in the same manner as before the making of this Agreement and in the same condition as it currently exists, as though Seller were retaining the Property;

13.2 Seller shall not, after the Effective Date, enter into or terminate any leases, contracts, agreements, or amendments of same, pertaining to the Property without obtaining the prior consent of Buyer;

13.3 Seller shall not encumber the Property with any liens, encumbrances, or other instruments creating a cloud on title or otherwise transferring or disposing of all or any part of the Property or any interest therein, unless the same will be removed, discharged, or paid in full on or before the Closing; and

13.4 Seller shall not offer the Property for sale or lease or otherwise solicit, make, pursue, negotiate, or accept offers for the sale or lease of the Property to any third party.

#### 14. ENVIRONMENTAL POST-CLOSING OBLIGATIONS; HAZARDOUS MATERIALS; DEFINITIONS.

14.1 Buyer's Post-Closing Obligations. Buyer acknowledges that Buyer and its experts have studied and understand the impacts, potential impacts and risks associated with the Pre-Existing Property Conditions on and relating to acquisition, development and operation of the Property and that from and after the Closing Date, Buyer shall design, develop, construct, operate, manage, and maintain the Project in accordance with Best Management Practices applicable to the Project in a manner that mitigates the adverse impacts of said Pre-Existing Property Conditions in accordance with all Applicable Laws, agreements, covenants, directives, guidance, orders, enforceable requirements, and Best Management Practices applicable to the Project and the Property, including Buyer's obligations pursuant to the Postclosure Plan. In addition to the foregoing and Buyer's other obligations under this Agreement, Buyer agrees that it shall implement, operate, and maintain each of the specific mitigation measures identified in Exhibit F ("Buyer's Post-Closing Mitigation Measures").

14.2 Seller's Post-Closing Obligations. In addition to Seller's other obligations under this Agreement, Seller agrees that it shall implement, operate, and maintain each of the specific mitigation measures identified in Exhibit G ("Seller's Post-Closing Mitigation Measures").

14.3 Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified or regulated pursuant to any Environmental Laws (defined below), including as a "hazardous substance", "hazardous material", "waste", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "contaminant", "pollutant", "toxic pollutant", or any other term or formulation intended to define, list, classify or regulate substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, per- and polyfluoroalkyl substances, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, methane, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

Environmental Laws. As used in this Agreement, "Environmental Laws" means any and all federal, state and local statutes, laws (including common laws), ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

The provisions of this Section 14 shall survive the Close of Escrow.

## 15. MISCELLANEOUS.

15.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service

of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

15.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

15.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

15.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

15.5 Governing Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California with venue in the court of competent jurisdiction in San Mateo County.

15.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

15.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

15.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served by email, personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which

provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Buyer: Ensemble Investments, LLC  
444 West Ocean Boulevard  
Suite 650  
Long Beach, CA 90802  
Attn: Senior Vice President, Conrad Garner  
Telephone No.: (562) 435-4857  
cgarner@ensemble.net

With a Copy to: Coblentz Patch Duffy & Bass LLP  
One Montgomery Street, Suite 3000  
San Francisco, CA 94104  
Attn: Frank Petrilli  
Telephone No.: (415) 268-0503  
fpetrilli@coblentzlaw.com

To Seller: City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
Attn: City Manager, Mike Futrell  
Telephone No.: (650) 829-6620  
Fax (650) 829-6609  
mike.futrell@ssf.net

With a Copy to: Meyers Nave PC  
1999 Harrison Street, 9th Floor  
Oakland, CA 94612  
Attn: City Attorney, Sky Woodruff  
Telephone No.: (510) 808-2000  
swoodruff@meyersnave.com

If to Escrow Holder: Tyson Micklebost  
Chicago Title Insurance Co  
One Embarcadero Center, Suite 250  
San Francisco, CA 94111  
Telephone No.: (415) 291-5109  
Tyson.miklebost@ctt.com

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Notice by email transmission shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day, or else on the next business day. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

15.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

15.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

15.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

15.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

15.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

15.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

15.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

15.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

15.17 Possession. At Closing, Seller shall deliver sole and exclusive possession of the Property to Buyer.

15.18 Approvals. Whenever this Agreement calls for Seller approval, consent, extension or waiver, the written approval, consent, or waiver of the Seller's City Manager or his or her designee(s) shall constitute the approval, consent, extension or waiver of the Seller, without further

authorization required from the Seller's Council. The Seller hereby authorizes the City Manager and his or her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce Seller's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the Seller.

15.19 Force Majeure. Buyer shall not be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any obligation under this Agreement, when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of Buyer to perform its obligations under this Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay. Buyer shall give Seller notice within five (5) business days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. Buyer shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. Buyer shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. As used herein, "Force Majeure Event" is any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) governmental authority, proclamations, orders, laws, actions, or requests; (v) embargoes or blockades; (vi) epidemics, pandemics, or other national or regional emergencies; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortages of supplies, adequate power, or transportation facilities.

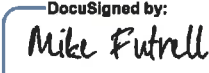
15.20 Environmental Review. This Agreement has been reviewed with respect to the applicability of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). City staff has determined that entering into this Agreement does not have the potential for creating a significant effect on the environment and is therefore exempt from further review under CEQA pursuant to State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. Entering into this Agreement does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Nothing in this Agreement commits the City to a particular course of action with respect to the proposed Project, and the City will not take any discretionary actions committing it to a particular course of action in connection with the proposed Project until the City has completed, considered and certified/approved any additionally required CEQA environmental review documents.

SIGNATURES ON FOLLOWING PAGE

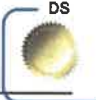
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:

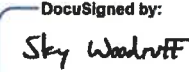
CITY OF SOUTH SAN FRANCISCO

By:   
6852134787CA4DB  
Mike Futrell  
City Manager

ATTEST:

By:   
5908B15FF83F418...  
City Clerk 

APPROVED AS TO FORM:

By:   
D47F525AE463483  
Sky Woodruff  
City Attorney

BUYER:

ENSEMBLE INVESTMENTS, LLC,  
a California Limited Liability Company

By:   
BDE8572231FA469...  
Kambiz Babaoff  
Title: Authorized Signatory

**LIST OF EXHIBITS**

|           |                                           |
|-----------|-------------------------------------------|
| Exhibit A | Legal Description/Parcel Map              |
| Exhibit B | BCDC Permit                               |
| Exhibit C | Development Agreement Term Sheet          |
| Exhibit D | Grant Deed                                |
| Exhibit E | Postclosure Responsibility Matrix         |
| Exhibit F | Buyer's Post-Closing Mitigation Measures  |
| Exhibit G | Seller's Post-Closing Mitigation Measures |

Exhibit A

**LEGAL DESCRIPTION/PARCEL MAP**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS: Parcel 6, as shown on that certain Map entitled "Parcel Map No. 17-0002 Oyster Point", filed for record on September 25, 2017, in Book 83 of Parcel Maps, at Page 50, San Mateo County Records.

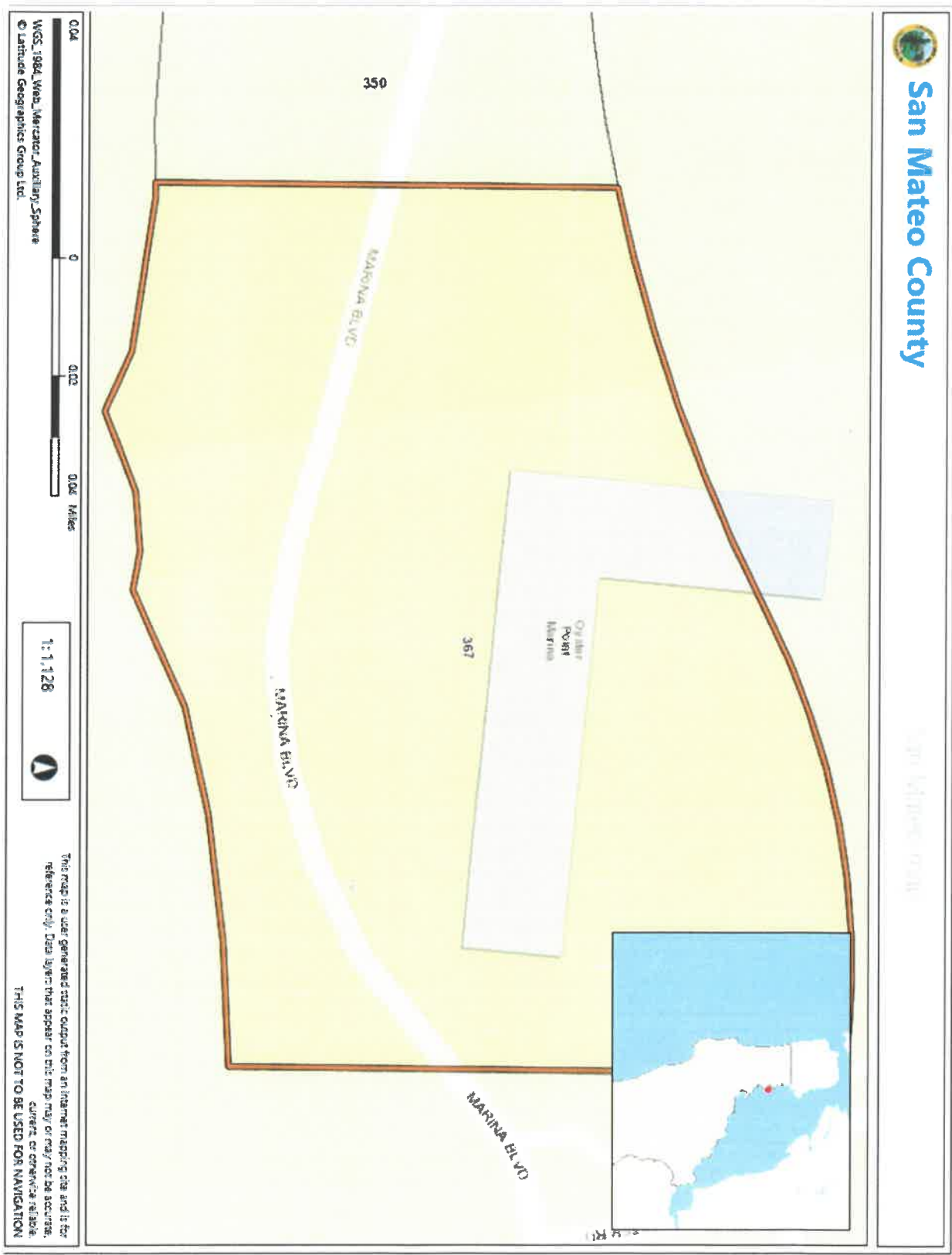


Exhibit B

**BCDC PERMIT**

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

## **PERMIT NO. 2017.007.02**

(Originally Issued on April 27, 2018, and  
Amended Through July 30, 2021)

## **AMENDMENT NO. TWO**

Kilroy Realty TRS, Inc.  
12200 West Olympic Boulevard, Suite #200  
Los Angeles, CA 90064

### **AND**

City of South San Francisco  
315 Maple Avenue  
South San Francisco, California 94080

On April 19, 2018, the San Francisco Bay Conservation and Development Commission, by a vote of 14 affirmative, 0 negative, and 0 abstentions, approved the resolution pursuant to which the original permit had been issued. ~~Moreover, on~~ On September 11, 2020, the Executive Director of the San Francisco Bay Conservation and Development Commission approved Amendment No. One, pursuant to which this amended permit is hereby issued ~~Moreover, on July 30, 2021, the Executive Director approved Amendment No. Two, pursuant to which this amended permit is hereby issued:~~

### **I. Authorization**

- A. **Authorized Project.** Subject to the conditions stated below, the permittees, Kilroy Realty TRS, Inc., and the City of South San Francisco are hereby granted permission to conduct activities, in the Bay and within the 100-foot Shoreline Band as part of the Oyster Point Development Phases IC, ID, and a portion of IIC, at the Oyster Point Marina, partially within an area designated as a “waterfront park/beach” priority use area on the San Francisco Bay Plan Map No. 5, in the City of South San Francisco, San Mateo County.

#### **In the Bay:**

##### **1. Phase IC**

- a. Place approximately 88 cubic yards of sand and soil over an approximately 3,914-square-foot area to repair the clay cap covering the existing landfill;
- b. Restore and maintain an approximately 3,914-square-foot area tidal marsh;
- c. Remove approximately 75 linear feet of an 18-inch-diameter outfall pipe; and
- d. Install two interim floating docks, approximately 1,040 square feet and 1,120 square feet, at the West Basin of Oyster Point Marina to connect Docks 2 to 3 and 4 to 5, respectively, for approximately one year (Amendment No. One).



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Kilroy Realty TRS, Inc. and City of South San Francisco

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**Within the 100-foot Shoreline Band and partially within the Waterfront Park, Beach Priority Use Area:**

1. Subdivision of property on approximately 36-acres into six (6) new parcels and one (1) remainder parcel (after-the-fact).
2. **Phase IC**
  - a. Demolish approximately 64,400 square feet of infrastructure and remove approximately 25 feet of an 18-inch-diameter outfall pipe;
  - b. Regrade an approximately 265,600-square-foot (6.10 acre) area;
  - c. Place, use, and maintain approximately 1,944 cubic yards of material across an approximately 26,250-square-foot area to repair the landfill cap;
  - d. Construct, use, and maintain an approximately 400-foot-long portion of Marina Boulevard and approximately 4,400 square feet of sidewalk;
  - e. Enhance, use, and maintain an approximately 2,200-foot-long portion of public access trail and construct, use, and maintain approximately 1,500 linear feet of public access pathways;
  - f. Place, use, and maintain approximately 1,200 cubic yards of material to replenish the approximately 13,000-square-foot beach and construct, use, and maintain a six-foot-wide accessible beach path from the trails to the beach, an approximately 185-square-foot portion of an eight-foot-wide wooden overlook deck, and an approximately 900-square-foot maintenance trail;
  - g. Install, use, and maintain a portion of an approximately 200-square-foot public restroom with a changing station and shower, a portion of an approximately 1,500-square-foot public and private restroom, and an approximately 750-square-foot private restroom;
  - h. Construct, use, and maintain a public access area including an approximately 6,470-square-foot portion of a lawn, an approximately 3,480-square-foot portion of a picnic area, a 3,350-square-foot portion of a flexible gravel area, and an approximately 4,400-square-foot-portion of a parking lot;
  - i. Construct, use, and maintain two (2) 130-foot-long ramps, two (2) 100-foot-long ramps, and two (2) stairways to connect to the Oyster Point Marina gates to Dock One through Dock Seven;
  - j. Landscape a shoreline area with approximately 71,200 square feet of salt marsh vegetation and approximately 51,500 square feet of low groundcover planting; and
  - k. Hydroseed an approximately 40,600-square-foot (0.93-acre) area of the edge of the Parcel 5 Park Area.

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**3. Phase ID**

- a. Regrade an approximately 35,000-square-foot area;
- b. Construct, use, and maintain an approximately 41-foot-wide (approximately 28,462 square feet) service lane with an approximately 32-inch tall (approximately 812-foot-long) guardrail, an approximately 174-foot-long retaining wall, and an approximately 210-square-foot portion of an office/R&D complex;
- c. Construct, use, and maintain an approximately 236-square-foot portion of an overlook; and
- d. Landscape an approximately 32,600-square-foot area.

**4. Phase IIC**

- a. Place approximately 1,200 cubic yards of clay soil over an approximately 31,435-square-foot area to repair the clay cap; and
- b. Construct, use, and maintain a set of stairs to the existing windsurfer launch.

**B. Permit Application Date.** This amended authority is generally pursuant to and limited by the application dated September 8, 2017, ~~and the request for Amendment No. One dated August 13, 2020,~~ and the request for Amendment No. Two dated April 26, 2021, including all accompanying and subsequent correspondence and exhibits, subject to the modifications required by conditions hereto.

**C. Deadlines for Commencement and Completion of Authorized Activities.** The activities authorized in the original permit was to commence prior to May 31, 2019, or this permit will lapse and become null and void. All construction work authorized herein must be diligently pursued to completion and completed within three years of project commencement or by May 31, 2022, whichever is earlier, unless an extension of time is sought from the Commission by the permittee and is granted by amendment of the permit. All in-kind maintenance authorized herein, is allowed as long as activities and uses authorized herein remain in place and as long as relevant property interests, including leases, are valid.

The project authorized in Amendment No. One must commence by December 31, 2021 and must be diligently pursued to completion within two years of commencement, or no later than December 31, 2023 unless an extension of time is granted by a further amendment of this amended permit.

**D. Project Summary**

1. **Bay Fill.** The project will result in the placement of 88 cubic yards of fill over an approximately 3,914-square-foot area of tidal marsh along the northern shoreline at the Marina Waterfront area. The fill would repair the clay cap covering the existing landfill to provide the full four feet of Title 27 and Regional Water Quality Control Board required cover over the landfill. To mitigate for the impacts of the fill, the project would restore the impacted area by replanting tidal marsh species and would monitor the area for three years.

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2. **Public Access.** The project site is currently a mix of developed areas and open space. Approximately 9.97-acres of open space or public access areas exist today at the site, including areas that were previously required by BCDC Permits 1977.001.00 and 2008.001.00. The public access improvements would include a widened Bay Trail (from 14 feet to 18 feet), a 3.51-acre park, a replenished beach, a lawn area, a picnic area, and a flexible gravel area. These public spaces would include restrooms, a shower, seating, and bicycle parking. The project will replace and expand a BCDC required overlook, required in BCDC Permit No. M1990.037.01.
- E. **Related BCDC Permits.** The project site is associated with the following BCDC Permits: 1977.001.17 for the Oyster Point Marina and public access improvements; M1990.037.01 for a UPS facility and public access improvements; 1999.008.00 (never constructed) for a hotel parking structure and public improvements; 2008.001.00 for the South San Francisco Water Emergency Transportation Authority ferry terminal and public improvements; and M2017.006.00 for a temporary road during construction.

## **II. Special Conditions**

The amended authorization made herein shall be subject to the following special conditions, in addition to the Standard Conditions contained herein:

### **A. Specific Plans and Plan Review**

1. **Construction Documents.** The improvements authorized herein shall be built generally in conformance with the following documents:

#### **a. Grading**

- (1) The plan set entitled "Oyster Point- Refuse Relocation & Cap Repair Construction Documents," prepared by Wilsey Ham Engineering, Surveying, and Planning, and dated October 10, 2017; and
- (2) The plan set entitled "Oyster Point- Phase IC Streets and Utility Design," prepared by Wilsey Ham Engineering, Surveying, and Planning, and dated October 30, 2017.

No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment. No further plan review of the grading work described in these documents is required unless substantial changes are made. As-built documents should be submitted upon completion of grading to note any changes made.

#### **b. Landscape Plans**

- (1) The plan set entitled "Oyster Point Development Phase IC 100% Design Development Submission," prepared by James Corner Field Operations, and dated September 20, 2017, including minor changes as shown in Exhibits A through E;

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- (2) The plan page entitled "Oyster Point Development Phase IC Overall Material and Furnishing Plan L-1.00," dated November 17, 2017 and provided to Commission staff on December 4, 2017 in the submittal packet entitled "Attachment M- Oyster Point Restroom Description"; and
- (3) The schematic design set entitled "Oyster Point-Phase 1D, Warm Shell Schematic Design Update," prepared by DGA, and dated July 28, 2017 and the plan set entitled "Oyster Point Ph. 1D BCDC Overlook Analysis," prepared by BKF, and dated March 23, 2018.

**c. Mitigation**

- (1) The plan entitled "Abbreviated Phase IC Mitigation and Monitoring Plan," prepared by SKS and WRA, and provided to the Commission staff and the staff response, both on March 13, 2018.

**d. Amendment No. One**

- (1) The work authorized by Amendment No. One shall be built generally in conformance with the diagram entitled "Project Vicinity Map," and the plans entitled "#1 & #2 Dock Layout," "#1 Set of Docks," and "#2 Set of Docks," prepared by Rick Pelchat and dated March 15, 2020, submitted as part of the application. No further plan review is required for the work authorized by Amendment No. One unless substantial changes are made.

Except as otherwise provided, plan review is required for all landscape and other site development work, including work associated with the plan sets described in II.A.1.b, pursuant to Special Condition II.A.2.

The permittee is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this permit and any legal instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 60 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. A summary list of any changes that have taken place between the approved plans referenced in Special Condition II.A.1 and the final plans submitted for plan review shall be provided with the request for review. If the final construction document review is not completed by or on behalf of the Commission within the 60-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.
  - a. **Document Details.** All construction documents shall be labeled with: Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band;

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property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas required herein.

- b. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
- c. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.
- d. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission's Design Review Board.
- e. **Construction.** The final plans submitted pursuant to this condition shall generally conform to Exhibits A through E to this permit. Final plans for the construction of the structures authorized herein shall be prepared and submitted for Commission review as described below. No changes to the design of the project shall be made without the prior written approval of the Commission staff.

**B. Public Access**

**1. Area**

- a. **Total Public Access Area.** The required public access for this project, including the Marina Waterfront/Beach area and the Parcel 5 Park Area, is comprised of approximately 9.99 acres (435,000 square feet) as follows:
  - Public access in the shoreline band: approximately 138,500 square feet (3.18 acres).
  - Public access out of the shoreline band: approximately 296,500 square feet (6.81 acres).

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Kilroy Realty TRS, Inc. and City of South San Francisco

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- b. **Marina Waterfront/Beach.** The approximately 6.48-acre (282,300-square-foot) “Marina Waterfront/Beach” area, not including the 3.51-acre “Parcel 5 Park Area,” along approximately 1,700 linear feet of shoreline, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, parking (within designated parking areas), and related purposes, except as otherwise provided in Special Condition II.B.8. If the permittees wish to use the Marina Waterfront/Beach area for purposes other than public access, it must obtain prior written approval by or on behalf of the Commission.
  - c. **Parcel 5 Park Area.** The approximately 3.51-acre (152,700-square-foot) “Parcel 5 Park Area”, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access, except as otherwise provided in Special Condition II.B.4.b.
  - d. **Other Public Access Areas.** This permit requires two areas that are outside of the total project area described herein. The 12-foot-wide North-South Connector path, as provided in Special Condition II.B.3, and the Phase ID Slough Overlook as provided in Special Condition II.B.11.
- 2. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, except as otherwise provided by this permit, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

  - a. An approximately 3.51-acre “Parcel 5 Park Area,” as described in Special Condition II.B.4;
  - b. Within the Marina Waterfront/Beach Area, an approximately 13,000-square-foot replenished beach with a six-foot-wide accessible path from the paved path to the beach, an accessible beach mat to extend to the water’s edge, an approximately 1,350-square foot wooden deck with seating, and an approximately 200-square-foot public restroom with a shower and changing station (Exhibit B);
  - c. Within the Marina Waterfront/Beach Area, a waterfront park area with an approximately 4,000-square-foot picnic area with six picnic tables and three barbeque areas; an approximately 8,000-square-foot lawn; a 5,750-square-foot decomposed granite area with seating; and a public restroom within a portion of an approximately 1,500 square-foot public/private restroom (Exhibit C);
  - d. Within the Marina Waterfront/Beach Area, an approximately 2,200 foot-long and 18-foot-wide paved path along the shoreline;
  - e. Within the Marina Waterfront/Beach Area, an approximately 10-foot-wide path network between the beach area and the waterfront park area, connecting to the 18-foot-wide path and the adjacent public streets;

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- f. Adjacent to the Marina Waterfront, a 137-space vehicle parking lot to be used for public shoreline parking and marina parking;
- g. Irrigated planting over the remainder of the 102,700-square-foot public access area as shown in Exhibit A;
- h. Approximately 20 bicycle racks and appropriate lighting throughout the public access areas; and
- i. No fewer than 5 public access signs and, when appropriate, Bay Trail signs, at appropriate trailheads and intersections throughout the site and Water Trail Signs at designated launches.

Such improvements shall be substantially consistent with the plans approved pursuant to Condition II.A.1 of this authorization and generally conform to the plans entitled "Oyster Point Development Phase IC 100% Design Development Submission," dated September 20, 2017, prepared by James Corner Field Operations and the plan review of the subsequent construction documents as required in Special Condition II.A.2.

3. **North-South Connector Path.** ~~Within six months following the completion of site grading, unless an extension of time is granted by amendment of this permit, the permittees, or their assignees, shall construct a temporary 12-foot-wide, accessible "North-South Connector Path" that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the "Parcel 6 Hotel Site," to the southern sidewalk on the newly constructed Marina Boulevard as shown on Exhibit A. A permanent 12-foot-wide paved pathway shall be installed within three (3) years of issuance of the BCDC permit if a City of South San Francisco building permit has not been issued for the construction of the hotel on the "Parcel 6 Hotel Site". If a building permit is issued within three years of issuance of this BCDC permit, an extension of time will be granted by amendment of this permit to allow construction of the hotel and incorporation of a permanent North-South connector path through the hotel site. The final location and design of the permanent path shall be approved by or on behalf of the Commission pursuant to Special Condition II.A. The permanent North-South Connector Path shall be constructed of a durable all-weather, accessible material.~~

- a. **Interim North-South Connector Path.** Within 6 months following the completion of Phase IC, unless an extension of time is granted by amendment of this permit, the permittees, or their assignees, shall construct a 12-foot-wide, accessible "Interim North-South Connector Path" that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the "Parcel 6 Hotel Site," to the southern sidewalk on the newly constructed Marina Boulevard as shown on Exhibit A. The path shall be constructed of a durable, all-weather accessible material.

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**b. Permanent North-South Connector Path.** At such time as construction for the "Parcel 6 Hotel Site" commences, the "Interim North-South Connector Path" may be closed. The hotel project shall incorporate a 12 foot-wide "Permanent North-South Connector Path" through the hotel site. The permittees, or their assignees, shall request review and approval on behalf of the Commission for plans for a 12-foot-wide "Permanent North-South Connector Path," which will pass through the hotel site and be approved pursuant to Special Condition II.A. The "Permanent North-South Connector Path" shall be installed and opened to the public upon opening of the hotel, and no later than 36 months following closure of the "Interim North-South Connector Path." The path shall be constructed of a durable, all-weather accessible material.

**4. Parcel 5 Park Area**

- a. Construction.** The Parcel 5 Park Area shall be graded and hydroseeded and maintained as useable open space until a development plan is available. No later than five (5) years after issuance of the BCDC Permit, the permittees shall prepare and submit a development plan for the Parcel 5 Park Area for review and approval by or on behalf of the Commission pursuant to Special Condition II.A. Additional DRB review may be required, at the discretion of the Commission or Commission staff, for development within the Parcel 5 Park Area.

If the permittees wish to use the public access area within the Commission's jurisdiction for a use other than public access purposes, except as provided by Special Condition II.B.4.b., below, the permittees must obtain prior written approval by or on behalf of the Commission, pursuant to Special Conditions II.A and II.B.8.

- b. Commercial Recreation Use.** An approximately 0.5-acre area within the Parcel 5 Park Area may be used for commercial recreation facilities, such as, but not limited to, kiosks or similar structures for a farmer's market, restaurant space of up to 7,500 square feet, and recreational equipment concession facility. The type and location of the commercial recreation uses shall be submitted to the Commission for review and approval pursuant to Special Condition II.A prior to the initiation of any construction for such facilities. The Commission shall not unreasonably withhold or condition approval of such commercial uses, provided that they would not diminish the ability of the public to freely enjoy the remainder of the required public areas.

- 5. Maintenance.** The areas and improvements within the total 9.99-acre (435,000-square-foot) public access area shall be permanently maintained by and at the expense of the permittees or their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt due to a failure to maintain the trees or plant materials; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of

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any encroachments into the access areas; maintenance and repairs of damage due to flooding, and ensuring that the public access signs remain in place and visible. Within thirty (30) days after notification by staff of any maintenance deficiency, the permittee shall correct such deficiency or, if such deficiency is of a nature that cannot be feasibly be corrected within thirty (30) days, commence and thereafter pursue to completion correction of such deficiency.

**6. Sea Level Rise and Adaptation**

- a. **Flood Reporting.** If any portion of the public access required herein and described in Special Condition II.B.2 is subject to flooding that results in a closure of any area, the permittee shall submit to the Commission a written report within 30 days after the closure of the public access area. The written report shall include: the date and duration of the public access closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., Bay shoreline overtopping, stormwater backup, or overland flow); the resulting damage and/or cleanup; and representative photographs with site details.
- b. **Adaptation Plan.** By December 31, 2050, or when flooding of the public access areas occurs due to sea level rise and associated storm events, whichever is sooner, the permittees shall prepare and submit a risk assessment for the public access areas required herein, to be approved by or on behalf of the Commission, pursuant to Special Condition II.A.

The risk assessment shall incorporate: (1) the most up-to-date sea level rise guidance from state and federal agencies; (2) an analysis of current water levels; (3) an analysis of landfill subsidence and its contribution to flooding; (4) any observed flooding events as reported in Special Condition II.B.6.a; (5) all types of potential flooding; (6) degrees of uncertainty; (7) preferred adaptation strategies to ensure the viability of the public access to flooding from sea level rise and storms; (8) consequences of defense failure; and (9) a timeline for implementation of shoreline adaptation to protect the required public access areas from flooding.

Upon review and approval of the risk assessment by or on behalf of the Commission, the permittees shall implement, including through any necessary Commission permits or amendments to Commission permits, all approved adaptation strategies within the approved timelines.

No permanent restrictions or closures of required public access areas may take place without additional approval by or on behalf of the Commission. If avoiding permanent closures is infeasible, the permittee shall provide equivalent public access to ensure public access to and along the shoreline in the event of permanent restrictions or closures contingent in part on the Commission's review and approval of such project modifications.

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7. **Assignment.** The permittees may transfer maintenance responsibility to a public agency or another party acceptable to the Commission provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
8. **Special Events.** The permittees may conduct temporary non-ticketed and no-fee public special events within the public access area required herein. All equipment, garbage, waste or other event-related items shall be removed from the public access area immediately following the completion of the event.
  - a. **Special Event Plan Review.** Prior to holding a special event as allowed herein, the permittee shall submit a special event plan review request to the Commission's staff a minimum of 30 days prior to the proposed event. The request must include the event date; the event's duration including set up and take-down time, location, purpose; a description of any temporary structures proposed for the event; and an explanation of how the event would impact the public access areas required in Special Condition II.B.1. The special event shall ensure that no paths required by this permit would be closed as part of the event.
  - b. **Five-Year Time Limitation.** The permittee is allowed to conduct special events, as described and restricted herein, for a period of five (5) years total, commencing from the completion of project construction. Within 180 days prior to the expiration of the five-year special events period, the permittee may request an amendment to this permit to extend the duration for holding special events at the project site. Authorization of an extension of special events will be based, in part, on the analysis of the special event plan review required above, the frequency of events held, and the return of the area used for the special event to full public use. In analyzing whether the special event time period may be extended, the Commission may require a change in the type of reporting for a future five year time period. If the permittees have complied with the requirements of Special Condition II.B above, the duration of the authority to conduct special events shall be extended for an additional five (5) years, provided there is continued compliance by the permittees with the requirements of Special Conditions II.B.8.a for subsequent five year periods.
9. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

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10. **Windsurfer Launch.** The Phase IIC clay cap work at the windsurfer launch located at the eastern end of the Oyster Point peninsula shall not take place between June 1<sup>st</sup> to August 31<sup>st</sup>, which is the peak windsurfer season. The permittees shall coordinate with the San Francisco Water Trail, the San Francisco Boardsailing Association, and Commission staff to provide appropriate detours, signage plan, and a potential alternative launch location. The launch shall not be closed for a period longer than five months.
  11. **Phase ID Slough Overlook.** Along Gull Drive, an approximately 450-square-foot overlook/seating area site to provide views of the slough along the southern shoreline and the Bay. The overlook shall include a bench, interpretive signage, and one trash container (Exhibit D). The overlook shall be constructed prior to the use of the Phase ID office/R&D complex. The area between the service road and the slough shall be landscaped with low cover plantings. Landscaping along the slough area with planting on the retaining walls for the Phase ID service lane and trees outside of the view shed from the overlook area.
- C. **Phase ID Slough Open Space Dedication.** Prior to the use of the Phase ID office/R&D complex authorized herein, the permittees shall permanently restrict as open space to remain in its current condition with no further filling or development, all portions of the property that the permittees own, leases, or controls within the approximately 68,450-square-foot shoreline area along the slough at the southern and southwest portions of the site as shown on Exhibit A.

The permittees shall comply with this condition by submitting to the Executive Director an instrument that creates such open space restriction and that includes a map that shows all appropriate boundaries, including the shoreline (Mean High Water Line or five feet above Mean Sea Level if marsh is present), and a metes and bounds description of the area being restricted as open space. The instrument shall be in a form suitable for recording in San Mateo County.

The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required open space condition. If the Executive Director approves the instrument, the permittee(s) shall record the instrument on all parcels affected by the instrument within 30 days of its approval and shall thereafter provide the Commission with a copy of the recorded instrument. If the Executive Director disapproves the instrument, the permittee(s) shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and the permittee(s) shall record the approved instrument on all parcels affected by the instrument within 30 days of its approval.

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**D. View Corridor**

1. **Visual Access.** The permittees shall leave as open space and undeveloped in perpetuity a 76-foot-wide view corridor located on the along Oyster Point Boulevard as shown on Exhibit E to allow visual access from the public street to the Bay. The permittees shall not construct any structures that would impede views to the Bay within this corridor. The permittees shall landscape the view corridor only with plants or shrubs that do not exceed three feet in height and that have been approved by or on behalf of the Commission pursuant to Special Condition II.A to this permit (Exhibit E).
2. **Maintenance of Planting.** The permittees shall maintain the view corridor. Maintenance shall consist of the regular trimming of shrubs and any plants to prevent their exceeding three feet in height and clearing and replacing of any dead plants.

**E. Marsh Protection**

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at their expense.
2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation, except for the approximately 3,914-square-foot tidal marsh area authorized to be filled pursuant to this permit and restored pursuant to Special Condition II.F. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the permittee shall notify the Commission's staff and prepare a mitigation and monitoring plan detailing remedial actions. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; and (2) carefully removing, storing, and replacing wetland vegetation that has been removed or "peeled back" from construction areas as soon as possible following construction.
3. **Debris Removal.** All construction debris and any uncovered debris, such as concrete, asphalt, wood, plastics, etc., shall be removed from the project site for proper disposal outside of the Commission's jurisdiction, except as authorized in the "Final Closure Plan Oyster Point Landfill," dated September 8, 2017. Excavated debris may be temporarily stored within the Commission's jurisdiction, provided measures are employed to assure that material does not wash or erode into the surrounding marsh or waterways. In the event that any such material is placed in any area within the Commission's jurisdiction for an extended period (i.e. more than 60 days), the

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permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

**4. Protection of Special Status Animal Species**

- a. **National Marine Fisheries Service.** The permittee shall construct the project authorized by this permit consistent with the consultation from the National Marine Fisheries Service (WCR-2017-8401), dated March 13, 2018. The permittees shall perform work within the tidal marsh area to repair the clay cap only during low tide.
- b. **U.S. Fish and Wildlife Service.** Prior to the initiation of the clay cap repair work within the tidal marsh, the permittee shall provide the Commission with the final consultation documentation from the U.S. Fish and Wildlife Service. If the consultation documentation results in substantial changes to the project authorized herein, the permittees shall seek and obtain an amendment to this permit.

**5. Upland Transition Zone.** The permittees shall maintain the upland transition zone, coastal meadow area (shoreline planting area as shown on Exhibit A). Maintenance shall include, but not be limited to the removal of any plant materials that die or become unkempt due to a failure to maintain the plant materials and the replacement of such dead plantings.

- F. **Mitigation and Monitoring.** Within six months of the issuance of this permit, the permittees shall submit and obtain approval by or on behalf of the Commission pursuant to the procedure provided for in Special Condition II.A, of the final mitigation and monitoring plan. This plan shall be generally consistent with the Abbreviated Phase IC Mitigation and Monitoring Plan provided to the Commission staff and the staff response, both on March 13, 2018. The plan shall clearly identify the existing site conditions, establish success criteria that match the existing site conditions, and outline monitoring methods. The impacted wetland area shall be restored to equal, or better than, pre-construction conditions, and non-native and invasive species shall represent less than 5% of the total cover of the restored site. The permittees shall monitor the restored area for a period of three years. If the restored site has achieved the required conditions prior to the timeline outlined in the approved Phase IC Mitigation and Monitoring Plan, the permittees may terminate monitoring before the three year period. Annual monitoring reports shall be submitted by December 31<sup>st</sup> of each year.
- G. **Water Quality Certification.** All construction activities in the Bay authorized herein shall comply with the requirements of the water quality certification dated March 13, 2018, issued by the Regional Water Quality Control Board, San Francisco Bay Region, including the restriction of in-water work to low tide events, the requirement to submit a final Mitigation and Monitoring Plan, and the control of invasive non-native plant cover to less than 5% of the total vegetative cover.

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H. **Amendment No. One Interim Dock Installation.** The following measures shall be implemented during installation of the interim docks authorized by Amendment No. One. Minor modifications to the below requirements may be approved by the Executive Director upon a finding that they are no less protective of Bay resources.

- a. **Work Window.** In-water work shall only occur between June 1 and November 30 of each year; and
- b. **Dock Encasement.** The interim docks authorized by Amendment No. One may be constructed with pressure treated wood, provided that the docks are wrapped or coated in a benign material to prevent the pressure treated wood from coming into contact with the water. The benign material will be applied to the pressure treated wood prior to constructing the interim floating docks to ensure the entire surface of the pressure treated wood is coated. The effective lifespan of the benign material shall be longer than the length of time the interim docks will be installed for.

**III. Findings and Declarations**

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Bay Fill.** The Commission may authorize fill when the fill proposed complies with the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that (1) fill "should be authorized only when public benefits from fill clearly exceed public detriment" and "should be limited to water-oriented uses" or for minor fill for improving shoreline appearance or public access to the bay; (2) fill should be approved only when "no alternative upland location" is available; (3) the fill is the "minimum necessary to achieve the purpose"; (4) the "nature, location, and extent of any fill should be such that it will minimize harmful effects to the bay area" including water quality and fertility of fish and wildlife resources; and (5) the fill will "be constructed in accordance with sound safety standards"; (6) the fill will establish a permanent shoreline; and (7) the applicants have valid title to the property where the fill would be placed.
  1. **Public Benefit v. Detriment and Water-Oriented Use.** Approximately 32.1 acres (1,400,000 square feet) of the project consists of a former landfill. Within the project area, the shoreline consists of a sandy beach and tidal marsh. Along the peninsula, outside of the project area, the shoreline consists of riprap rock revetment. In 2001, the Regional Water Quality Control Board issued a Water Board Order No. R2-2000-046 Waste Discharge Requirements for the landfill. Closed landfills are required to have a minimum of four feet of cover, pursuant to the standards for environmental protection of solid waste disposal sites in the California Code of Regulations Title 27. A Final Closure Plan for the Oyster Point Landfill was created on September 8, 2017. To comply with these requirements, the permittees must place approximately 88 cubic yards of clay and soil over an approximately 3,914-square-foot area along the

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shoreline to achieve the appropriate four-feet of cover of the clay cap protecting the historic landfill. According to the "Final Closure Plan Former Oyster Point Landfill, Oyster Point Properties- Phase I and II Development 379 Oyster Point Boulevard, South San Francisco, California" (Final Closure Plan), the clay cap protecting the existing landfill is deficient in some locations, with less than four feet of cover due to wave overtopping and ponding along the shoreline. The permittees will install additional cover to fix clay cap deficiencies over other portions of the site outside of the Commission's Bay jurisdiction. The Final Closure Plan states that placement of fill in the Bay to protect the landfill cap would prevent the leaching of chemicals and waste into the Bay, which would harm Bay resources and create a hazard for human use of the Oyster Point Marina. The permittees will place the material over the existing wetland habitat at the shoreline and restore the wetland vegetation to pre-construction conditions. The public detriment in the form of the loss of wetland habitat is temporary. The public benefits to the project include protecting Bay resources from potential contaminants contained in the historic landfill, facilitating use of portions of the site for public access, and restoring wetland at the site.

Additionally, approximately 75 linear feet of an 18-inch-diameter outfall pipe will be removed from the Bay at the beach area. The outfall will not be used at the site by the new development. This removal will not impact surrounding tidal marsh.

Special Condition II.F requires restoration of the area of tidal marsh impacted by the clay cap cover, to ensure the remediation cap remains protected and the public benefits of the fill are achieved. Special Conditions II.E and II.G are included to ensure the project is built consistent with the concurrence from NMFS and the water quality certification from the RWQCB. In addition, Special Condition II.A and II.B are included to ensure the fill is constructed consistent with the McAteer-Petris Act and the San Francisco Bay Plan.

The fill is a shoreline protection project, as the fill will protect the upland clay cap that protects the historic landfill from becoming exposed and releasing contaminants into the Bay. As a result, the fill authorized by this permit constitutes fill for a water-oriented use.

The public benefits of the project authorized by this permit exceed the public detriments of the fill, and therefore are consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

2. **Alternative Upland Location.** The fill is required under state law to resolve deficiencies in the clay cap over the historic landfill. It will only be placed in areas that have been mapped below the required four feet of cover. No alternative upland location is possible for the protection of the existing historic landfill clay cap, consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

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3. **Minimum Fill Necessary.** The fill will be placed exclusively within areas that have less than four feet of cover over the landfill. The project has been designed to use the minimum amount of fill necessary to achieve the four feet of cover over the clay cap and to support the replanted wetland vegetation. As a result, the fill authorized by this permit is the minimum amount necessary for the project consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.
4. **Effects on Bay Resources.** In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains related policies, as cited below.
  - a. **Fish and Wildlife.** The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 4 states, in part, that “[t]he Commission should consult with the California Department of Fish and [Wildlife] and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wild-life species... and give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.”

On March 13, 2018, the National Marine Fisheries Service (NMFS) issued a concurrence letter for the proposed project, concluding that the project would not likely adversely affect species protected under the federal Endangered Species Act, including the Central California Coast steelhead and the North American green sturgeon southern species. The concurrence states that the effects of the project are “not expected to result in either a net change to existing habitat values in the action area or result in adverse impacts to designated critical habitat” for project species that occur in this area. NMFS determined that the project will result in increased turbidity, but that this would be minor and temporary. Additionally, NMFS determined that the clay cap work will result in the disturbance of benthic aquatic macroinvertebrates that steelhead and green sturgeon feed upon. However, the area is anticipated to be recolonized quickly following construction. The California Department of Fish and Wildlife provided comments on the timing of the project within the wetland area and stated that because the work would take place during low tide, the work “is unlikely to impact state listed or commercially managed species.”

At the time of issuance of this permit, U.S. Fish and Wildlife Services (USFWS) had not provided a letter of concurrence with the U.S. Army Corp of Engineers determination that the project would not likely adversely impact protected species. USFWS staff communicated to the Commission’s staff that the USFWS did not have concerns about the project, and any recommendations in the letter of concurrence will be consistent with the recommendations of NMFS. Special Condition II.E.4 is included to ensure that the project is constructed in a manner that is consistent with the approval from NMFS. It also requires the permittees to submit the USFWS approval to Commission staff prior to the initiation of the

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clay cap repair work in the Bay. As conditioned, the fill authorized by this permit is consistent with the McAtteer-Petris Act requirements and the San Francisco Bay Plan policies related to fish, other aquatic organisms, and wildlife.

- b. **Water Quality.** The Bay Plan policies on Water Quality state, in part, that “Bay water pollution should be prevented to the greatest extent feasible. The Bay’s tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality” and that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan... [and] the policies, recommendations, decision, advice, and authority of the State Water Resources Control Board and Regional Board should be the basis for carrying out the Commission’s water quality responsibilities.” Additionally, the policies state, in part, that “[n]ew projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay...” Lastly, Policy 7 states that, “[w]henver practicable, native vegetation buffer areas should be provided as part of a project to control pollutants from entering the Bay, and vegetation should be substituted for rock riprap, concrete, or other hard surface shoreline and bank erosion control methods...”

On March 16, 2018, the RWQCB issued a water quality certification for the project, including the placement of fill for the clay cap repair work and the removal of an outfall. The fill will impact approximately 3,914 square feet of existing tidal marsh. As mitigation, the RWQCB required the impacted area to be restored to pre-construction conditions and the creation of a Mitigation and Monitoring Plan that would outline the existing site conditions and establish success criteria for the mitigation project. The RWQCB required the site to be controlled for invasive non-native sea lavender such that non-native and invasive plants shall be less than 5% cover of the restored area. Special Condition II.G has been included to ensure that the project is constructed in a manner that is consistent with the water quality certification.

Pursuant to Special Condition II.F, the permittees will restore the tidal marsh on top of the fill required for the clay cap work instead of covering the area with a hard substrate, such as riprap, to avoid erosion. The use of tidal marsh vegetation in place of rock riprap will better absorb pollutants and create a more natural shoreline and provide more effective habitat for fish and wildlife.

As conditioned, the fill authorized by this permit is consistent with the McAtteer-Petris Act requirements and the San Francisco Bay Plan policies related to water quality.

- c. **Tidal Marsh and Tidal Flats and Mitigation.** The Bay Plan policies on Tidal Marshes and Tidal Flats state, in part, that “tidal marshes and tidal flats should be conserved to the fullest possible extent” and that “[p]rojects should be sited

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and designed to avoid, or if avoidance is infeasible, minimize adverse impacts on any transition zone presented between tidal and upland habitats. Where a transition zone does not exist and it is feasible and ecologically appropriate, shoreline projects should be designed to provide a transition zone between tidal and upland habitats." The Bay Plan policies on Mitigation state, in part, that "[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required." Furthermore, Policy 7 states, in part, that "a mitigation program should be reviewed and approved by or on behalf of the Commission as part of the project. Where appropriate, the mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) Clear mitigation project goals; (b) Clear and measurable performance standards for evaluating the success of the mitigation project, based on measure of both composition and function, and including the use of reference sites; (c) A monitoring plan designed to identify potential problems early and determine appropriate remedial actions. Monitoring and reporting should be of adequate frequency and duration to measure specific performance standards and to assure long-term success of the stated goals of the mitigation project; (d) A contingency plan...and (e) Provisions for the long-term maintenance, management and protection of the mitigation site..."

The fill will be placed over an approximately 3,914-square-foot area that is the location of existing tidal marsh. Because the fill material is required for the landfill cap to be consistent with state law, it is not possible to avoid impacts to the tidal marsh. To mitigate for the adverse impacts to tidal marsh, the permittees will restore the site to tidal marsh following the placement of fill to protect the landfill cap. Special Condition II.F has been included to require the permittees to restore the impacted tidal marsh area and to submit monitoring reports pursuant to a plan approved by or on behalf of the Commission. The "Oyster Point Development Phase 1C, Abbreviated Mitigation Monitoring Plan," outlines that the area will be restored to pre-construction conditions and the area will be monitored for three years. Special Condition II.E has been included to ensure that the work adjacent to the wetland areas does not negatively impact wetland vegetation. Following permit issuance, a complete mitigation and monitoring plan will be developed analyzing the pre-construction conditions of the tidal marsh, performance standards, site maintenance, and monitoring techniques. The RWQCB required that the restored area limit the amount of cover by non-native sea lavender and other non-native or invasive species, resulting in a higher quality marsh habitat than exists today. Additionally, the larger project

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will provide a transition zone in the uplands for the marsh along the northern shoreline of the peninsula to migrate as sea levels rise. As a result, there will be no permanent adverse impacts to tidal marsh from the placement of fill.

As conditioned, the fill authorized by this permit is consistent with the McAteer-Petris Act requirements and the San Francisco Bay Plan policies related to mitigation and tidal marsh and tidal flats.

5. **Safety Standards.** In addition to Section 66605(e) of the McAteer-Petris Act regarding the seismic and flooding standards by which fill is designed and constructed, the Bay Plan contains related policies, cited below. The Bay Plan policies on Shoreline Protection state, in part, that “[n]ew shoreline protection projects and the maintenance or reconstruction of existing projects and uses should be authorized if: (a) the project is necessary to provide flood or erosion protection for (i) existing development, use or infrastructure, or (ii) proposed development, use or infrastructure that is consistent with other Bay Plan policies; (b) the type of the protective structure is appropriate for the project site, the uses to be protect, and the erosion and flooding conditions at the site; (c) the project is properly engineered to provide erosion control and flood protection for the expected life of the project based on a 100-year flood event that takes future sea level rise into account; (d) the project is properly designed and construct to prevent significant impediments to physical and visual public access; and (e) the protection is integrated with current or planned adjacent shoreline project measures...” Furthermore, Policy 4 states that “[w]henver feasible and appropriate, shoreline protection projects should include provisions for non-structural methods such as marsh vegetation and integrate shoreline protection and Bay ecosystem enhancement, using adaptive management. Along shorelines that support marsh vegetation, or where marsh establishment has a reasonable chance of success, the Commission should require that the design of authorized protection projects include provisions for establishing marsh and transitional upland vegetation as part of the protective structure, wherever feasible.”

Further, the Bay Plan Climate Change Policy No. 2 states, in part: “When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end-of-century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices.” Climate Change Policy No. 3 state, in part, “[t]o protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects...should be designed to be resilient to a mid-century

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sea level rise projection.” Climate Change Policy No. 7 states, in part, that until a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-by-case basis to determine the project’s public benefits, resilience to flooding, and capacity to adapt to climate change impacts. The following specific types of projects have regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding... [including] a public park.”

The fill is necessary to raise the areas with deficient landfill cover areas to be consistent with Title 27 and RWQCB Order No. R2-2000-046. The covering of the capped areas with marsh vegetation will prevent further loss of landfill cap cover and will provide protection through a mid-century projection of sea level rise of 24-inches at a minimum. The fill is anticipated to last through the end of the century. The restored tidal marsh will connect into the surrounding marsh and will create a natural shoreline. The project will provide transitional marsh plantings in the upland areas, however the RWQCB expressed concerns about the elevation change and the ability of the marsh to migrate landward as sea levels rise. Special Condition II.E.5 has been included to ensure that the transition zone is maintained and promotes a healthy marsh.

The fill is resilient to flooding from sea level rise and storms through the end-of-century. In addition, the fill associated with the project supports development of Oyster Point, including the construction of an enhanced public access area along the shoreline. This project will achieve regional goals and provide regional benefits by enhancing public access to the Bay and improving water access at a former landfill.

As a result, the project is consistent with the requirements of the McAteer-Petris Act and with the Bay Plan policies on Shoreline Protection and Climate Change.

6. **Valid Title.** The project site is owned by Oyster Point Development, LLC., and the City of South San Francisco.

As conditioned, the project is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan policies on fill.

- B. **Priority Use Area.** The project site is located within an area designated for Waterfront Park, Beach Priority Use in the Bay Plan Map No. 5 which provide that projects in this area should “Preserve and improve marina and shoreline park. Preserve picnicking, swimming, boating, hiking, windsurfing, and fishing opportunities. Possible ferry terminal. Allow if compatible with park and marina uses; serve with bus public transit to reduce traffic and parking needs. Some fill may be needed. Provide signage regarding fish consumption advisories for anglers.”

On September 16, 1999, the Commission adopted Bay Plan Amendment No. 2-99 and Resolution No. 99-06 to amend the San Francisco Bay Plan and Resolution 16 to delete approximately 37 acres from the waterfront park, beach priority use area designation on Plan Map 5. The remaining priority use area is 28.41 acres. The majority of the deletion

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was in the upland areas, but an approximately 0.5-acre area at the western end of the drainage channel (slough) located along the southern shoreline of the Oyster Point peninsula was also removed from the priority use area designation.

The area is subject to several existing BCDC permits. BCDC Permit No. 2008.001.00 authorized a Water Emergency Transportation Authority (WETA) ferry terminal. BCDC Permit No. 1977.001.17 requires the majority of waterfront park, beach priority use area for public access. Permit No. 1977.001.17 also requires a fishing pier on the eastern portion of the peninsula, which will not be changed as part of this project. The project will maintain, improve, and expand the existing public amenities required by the existing BCDC permits within the waterfront park, beach priority use area. Where public access areas are more specifically described in this permit, the required public access areas in BCDC Permit No. 1977.001.17 shall be superseded by this permit.

As part of the effort to fix landfill cap deficiencies, clay cap work will take place at the eastern corner of the peninsula within the Phase IIC area. However, the majority of work within Phase IIC is not designed at the time of issuance of this permit and will be subject to a future application and review by the Commission. The landfill clay cap work within the uplands in the Phase IIC area will involve the temporary closure of a portion of the Bay Trail and the windsurfer launch. Additional stairs will be added to the launch to conform to the new grading elevations from the clay cap work. Detour routes and timing of construction will be coordinated with the Commission and the San Francisco Boardsailing Association. Pursuant to Special Condition II.B.10, the project applicants will work with the San Francisco Bay Water Trail (Water Trail) and the San Francisco Board Sailing Association to ensure the new design meets the needs of the users. The construction at this location will take place during the windsurfing and kite surfing off seasons.

The peninsula was subdivided in the Fall of 2017, prior to the issuance of this permit. The subdivision created six new parcels and one remainder parcel. The subdivision removed the priority use area along the southern shoreline from the Parcel 5 Park Area and included this area in the remainder parcel instead. The subdivision of land is allowed pursuant to Regulation Section 10601(b)(6) and is a minor repair or improvement that requires a BCDC permit. Special Condition II.B requires the new parcel 5 as public access to mitigate for the fact that the priority use area on this portion of the peninsula will have inaccessible grading. As conditioned, the project is consistent with the Bay Plan Waterfront Park, Beach priority use designation.

- C. **Public Access; Recreation; and Views.** In assessing whether the project provides maximum feasible public access consistent with the proposed activities, the Commission has relied on the McAteer-Petris Act, the Bay Plan policies, and access requirements of similar previously permitted projects.
1. **Public Access Policies.** Section 66602 of the McAteer-Petris Act states, in part, that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Section 66632.4 states, "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of a water-oriented priority land uses...

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the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.”

The Bay Plan **Public Access** policies state, in part, that projects “should increase public access to the Bay to the maximum extent feasible” and that “...maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline...” Further, the policies state, in part, that “[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available” that “diverse and interesting public access experiences should be provided.” Additionally, the policies state, in part, that public access “should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Additionally, the policies provide that “[p]ublic access should be sited, designed, managed, and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding,” and that access should be designed consistent with the physical and natural environment. The policies also state, in part, that “[r]oads near the edge of the water should be designed as scenic parkways for slow-moving, principally recreational traffic. The road-way and right-of-way design should maintain and enhance visual access for the traveler, discourage through traffic, and provide for safe, separated, and improved physical access to and along the shore.” The policies state that “[p]ublic access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Further, the policies state, in part, that “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby” and that “[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Recreation** policies state, in part, that “[d]iverse and accessible water-oriented recreational facilities, such as marinas, launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population... and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels...waterfront parks should be provided wherever possible.”

Recreation Policy 2 states, in part, that: “Waterfront land needed for parks and beaches to meet future needs should be reserved now.... [however] recreational facilities need not be built all at once; their development can proceed over time. Interim use of a waterfront park priority use area prior to its development as a park

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should be permitted, unless the use would prevent the site from being converted to park use or would involve investment in improvements that would preclude the future use of the site as a park."

Recreation Policy 3 states, in part: "Recreational facilities, such as waterfront parks, trails, marinas...non-motorized small boat access, fishing piers, launching lanes, and beaches, should be encouraged and allowed by the Commission, provided they are located, improved and managed consistent with the following standards [including]...[d]ifferent types of compatible public and commercial recreation facilities should be clustered to the extent feasible to permit joint use of ancillary facilities and provide a greater range of choices for users; [s]ites, features or facilities within designated waterfront parks that provide optimal conditions for specific water-oriented recreational uses should be preserved and, where appropriate, enhanced for those uses, consistent with natural and cultural resource preservation; [a]ccess to marinas, launch ramps, beaches, fishing piers, and other recreational facilities should be clearly posted with signs and easily available from parking reserved for the public or from public streets or trails; [t]o reduce the human health risk posed by consumption of contaminated fish, projects that create or improve fishing access to the Bay at water-oriented recreational facilities, such as fishing piers, beaches, and marinas, should include signage that informs the public of consumption advisories for the species of Bay fish that have been identified as having potentially unsafe levels of contaminants"; "[and c]omplete segments of the Bay...Trails where appropriate."

Further, Recreation Policy 3 provides, regarding non-motorized boats that "[w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks" and that "access point should be located, improved and managed to avoid significant adverse affects on wildlife and their habitats." To enhance this use, such areas should include "...launching facilities, restrooms, rigging areas, equipment storage.... [and] be accessible...to ensure that boaters can easily launch their watercraft." And, moreover, the policies provide in part that "[s]andy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection."

Additionally, the Recreation policies state that waterfront parks "should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities" and that "[p]ublic parking should be provided in a manner that does not diminish the park-like character of the site." Also, on water oriented commercial-recreation, the policies state partly that "[w]ater-oriented commercial recreational establishments, such as restaurants... recreational equipment concessions...should be encouraged in urban areas adjacent to the Bay. Public docks, floats or moorages for visiting boaters should be encouraged at these establishments where adequate shoreline facilities can be provided."

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The Bay Plan Recreation policies pertaining specifically to designated waterfront park areas state, in part: "To assure optimum use of the Bay for recreation, the following facilities should be encouraged in waterfront parks...." The policies pertaining to waterfront park areas include the following: "(2) To capitalize on the attractiveness of their bayfront location, parks should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities. Recreational facilities that do not need a waterfront location, e.g., golf courses and playing fields, should generally be placed inland, but may be permitted in shoreline areas if they are part of a park complex that is primarily devoted to water-oriented uses, or are designed to provide for passive use and enjoyment of the Bay when not being used for sports... (4) Public launching facilities for a variety of boats and other water-oriented recreational craft, such as kayaks, canoes and sailboards, should be provided in waterfront parks where feasible. (5) Except as may be approved pursuant to recreation policy 4-b, limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development may be appropriate (at the option of the park agency responsible) in all parks shown on the Plan maps except where there is a specific note to the contrary. (6) Trails that can be used as components of the San Francisco Bay Trail...or links between them should be developed in waterfront parks. San Francisco Bay Trail segments should be located near the shoreline unless that alignment would have significant adverse effects on Bay resources; in this case, an alignment as near to the shore as possible, consistent with Bay resource protection, should be provided... (7) Bus stops, kiosks and other facilities to accommodate public transit should be provided in waterfront parks to the maximum extent feasible. Public parking should be provided in a manner that does not diminish the park-like character of the site. Traffic demand management strategies and alternative transportation systems should be developed where appropriate to minimize the need for large parking lots and to ensure parking for recreation uses is sufficient. (8) Interpretive information describing natural, historical and cultural resources should be provided in waterfront parks where feasible... (10) The Commission may permit the placement of public utilities and services, such as underground sewer lines and power cables, in recreational facilities provided they would be unobtrusive, would not permanently disrupt use of the site for recreation, and would not detract from the visual character of the site.

The Bay Plan **Transportation** Policy 4 states, in part, that "[t]ransportation projects on the Bay Shoreline... should include pedestrian and bicycle pathways... Transportation projects should be designed to maintain and enhance visual and physical access to the Bay and along the Bay shoreline."

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The Bay Plan policies on **Appearance, Design, and Scenic Views** state, in part, that “all Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay” and that “[m]aximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas...” Furthermore, “[s]tructures and facilities that do not take advantage or complement the Bay should be located and designed so as not to impact visually on the shoreline. In particular, parking areas should be located away from the shoreline.”

2. **Maximum Feasible Public Access.** Approximately 9.97 acres of public park area existed at the site prior to the authorized project. BCDC Permit 1977.001.17 for the Oyster Point Marina requires a trail around the perimeter of the peninsula and the entire area at the peninsula to be open to the public. Where public access areas are more specifically described in this permit, the required public access areas in BCDC Permit No. 1977.001.17 shall be superseded by this permit. The permit also authorized the construction of a fishing pier and a public boat launch at the eastern end of the peninsula (outside of the authorized project area). BCDC Permit No. 2008.001.00 authorized a WETA ferry terminal and requires public access along a portion of the ferry pier, a viewing platform, and an approximately 565-foot-long north-south pathway. BCDC Permit No. M1990.037.01 authorized a UPS maintenance facility south of the project site and requires a sidewalk along Gull Drive and an overlook at the western end of the slough. City of South San Francisco staff estimates that approximately 300 people use the public access areas at the peninsula on a daily basis under the pre-project conditions, to access the Bay Trail, marina, ferry terminal, beach and other amenities.

The project will result in approximately 9.99 acres of enhanced public access. Approximately 6.81-acres of the public access will be located outside of the Commission's jurisdiction. Approximately 3.18-acres of public access will be located within the Commission's 100-foot shoreline band. The access consists of an approximately 6.48-acre shoreline park as part of Phase IC known as the Marina Waterfront/Beach area; a 3.51-acre Parcel 5 Park area that will be programmed at a later date but which could include some commercial recreation and restaurant uses on up to 0.5 acres of the 3.51 acre parcel; and an approximately 450-square-foot overlook at the western edge of the slough south of the project site as part of Phase ID. Special Condition II.B requires these areas for public access and requires the permittees to maintain these areas.

The Phase ID building will support approximately 950 employees. The future hotel site, located outside of the Commission's jurisdiction, will have approximately 350 rooms and additional employees to support the hotel. The anticipated number of daily users of the waterfront park area following project construction is 795 people, including use by people who work at the site and hotel guests. Additionally, Phases IID-IVD are anticipated to be office/R&D complexes and will support 3,180 employees. Special Condition II.B.4 requires the Parcel 5 Park Area, outside of the Commission's jurisdiction, to be available for public access to accommodate the increased number of visitors to the shoreline.

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Approximately 2,200 linear feet of Bay Trail will be widened from 14 feet to 18 feet and would extend along the Marina Waterfront area, connecting to the existing path at the northern peninsula and to the adjacent public access areas associated with the Ferry Terminal development. The Bay Trail will be paved and will include foot level lighting. The permittees shall maintain the trail and ensure that it appropriately connects to adjacent Bay Trail segments, as described in Special Condition II.B.

The Marina Waterfront/Beach area will include approximately 2.36 acres in planting, including bioretention areas, that will not be used for active public use. These plantings are necessary for filtration of storm runoff. Due to grading and planting, only approximately 4.12 acres of the park area will be usable by the public. A network of 10-foot-wide trails will connect the Marina Waterfront area to Oyster Point Boulevard and Marina Boulevard.

Special Condition II.B. requires the approximately 13,000-square-foot beach within the Marina Waterfront Area to be replenished, and the permittees will construct a six-foot-wide accessible path and beach mats, for universal access to the water, extending from the Bay Trail to the beach. This will facilitate access to the water, as required in the Recreation policies discussing waterfront parks. An eight-foot-wide, 1,350-square-foot wooden deck with seating will sit adjacent to the Bay Trail and overlook the beach and the marina. A 200-square-foot restroom with a changing station and a shower will be constructed west of the Bay Trail. A drop-off area will be provided on Oyster Point Boulevard for beach users, such as picnickers and kayakers, to unload items at a location closer than the public parking. An approximately 1,500-square-foot pump station will be located between the Bay Trail and Oyster Point Boulevard and would be screened by a fence and landscaping.

The Marina Waterfront Park area, as required in Special Condition II.B, will include an 8,000-square-foot lawn area; a 4,000-square-foot picnic area with six picnic tables and three barbeque pits; a 5,750-square-foot multi-use gravel area; and a 1.09-acre parking lot for approximately 137 vehicles. The park will include three seating areas with benches, lounge chairs, and picnic tables. The parking lot will be open for public use and would serve both the public access areas and the marina. The Phase ID office/R&D complex will have its own private parking. The multi-use gravel area will include seating and is proposed for special events, such as farmers markets and food trucks. Special Condition II.B.8 requires the permittees to submit a plan review request for any special event a minimum of 30 days prior to the event to ensure that these irregular uses of the site do not inhibit the public nature and use of the required public access areas. An approximately 1,500-square-foot restroom with a portion available to the public and a portion that will be for private use for the marina will be constructed on the western portion of the Marina Waterfront Park. An additional approximately 750-square-foot private restroom will be installed at the eastern end of the park. The private restrooms will serve the marina and would replace the existing private restrooms at the site. Approximately 20 bicycle racks will be installed between the beach area and the Marina Waterfront.

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The approximately 3.51-acre Parcel 5 Park area will be located south of Marina Boulevard, between the Phase ID building and a parcel proposed for a future hotel development (Parcel 6 Hotel Site), and outside of the Commission's jurisdiction. The hotel development will not be located within the Commission's jurisdiction and will not be subject to a future Commission permit application. Special Condition II.B requires the Parcel 5 Park Area for public access even though it is outside of the Commission's jurisdiction to ensure the project provides maximum feasible public access consistent with the project. The site already has required public access under existing BCDC permits, described above. Additionally, the enhanced shoreline park (Marina Waterfront Park) includes approximately 2.36 acres of landscaped areas that are not designed for public use, limiting the useable amount of space for the public within the 6.48-acre park. The project will result in a large increase in visitors to the shoreline associated with the office/R&D and hotel developments. As a result, additional useable public access areas are necessary to provide maximum feasible public access. The enhanced public access areas along the shoreline, along with the Parcel 5 Park Area are designed to accommodate the increased activity along the shoreline. The Parcel 5 Park Area and the Marina Waterfront park will greatly enhance the public access experience at the Oyster Point peninsula, providing maximum feasible public access consistent with the project.

A crosswalk will be installed on Marina Boulevard to provide for access from the public parking lot to the Parcel 5 Park Area. As provided in Special Condition II.B.4.a, the park will not be programmed until five years after the issuance of this permit for the Phase IC and ID developments to allow the design of the park to compliment the adjacent hotel and for the City to complete a public review process. In the interim, as required by Special Condition II.B.4.a, the park area will be graded, hydro-seeded, and maintained, including irrigation, as useable public open space. The park will include an approximately 11,900-square-foot temporary parking lot, which will be re-assessed and potentially removed when the park is designed.

Special Condition II.B.4.b allows for an approximately 0.5-acre portion of the Parcel 5 Park area to be used for limited commercial use, including the construction of commercial structures. These uses are anticipated to include the installation of facilities for farmers markets, a restaurant space of up to 7,500 square feet, and recreational equipment concession facilities. The 0.5-acre area has yet to be designed, and commercial recreational areas could be located in more than one location, so long as the total area of commercial recreation is consistent with this permit. These commercial recreational uses activate the Parcel 5 Park Area and will enhance the experience of the public. The exact type and location of these uses and structures will require further review and approval by or on behalf of the Commission, as required in Special Condition II.B.4.b. The Commission staff may reasonably consider an enlargement of the 0.5-acre commercial recreation use area through an amendment to this permit to accommodate planning of the commercial recreation area and the Parcel 5 Park area, taking into consideration the context of the design of Parcel 5 Park and public use of the area.

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The City of South San Francisco will host special events in the Parcel 5 Park Area and the multi-use gravel area within the Marina Waterfront Park. These events could impact the public's use of the shoreline within the 100-foot shoreline band by excluding the public from the special events areas and crowding the public access areas adjacent to the special events, thereby inhibiting circulation to and along the shoreline. Special Condition II.B.8 limits these events to non-ticketed and no-fee public events to allow this use to be consistent with the park like nature of these sites. To ensure that the majority of the public access remains useable during these special events, Special Condition II.B.8.a requires plan review and approval of each event before they may commence. The permittees must ensure that all pathways within the public access areas remain open to ensure that the public can move throughout the site. Special Condition II.B.8.b puts a five-year time limit for special events to be held. This time period can be extended in the future. If the permittees request for this time period to be extended by or on behalf of the Commission, Commission staff will analyze the plan review requests for each event, required in Special Condition II.B.8.a and how the public access areas have functioned under these events. If more than 15 events are held each year, Special Condition II.B.8 may be amended to require the submittal of annual reports providing a schedule for the upcoming years events and describing the prior year's special events, including details on each event, the number of participants, and any complaints received from the public.

Special Condition II.B.3 requires a North-South connector path to be constructed through the site of the proposed hotel outside of the Commission's jurisdiction (Parcel 6 Hotel Site) connecting Marina Boulevard to the pedestrian bridge that crosses the slough along the southern shoreline. A temporary 12-foot-wide path will be installed within 6 months of the completion of grading. The temporary path is necessary to allow access across the site, connecting the various public access areas. Without it, the public would not be able to easily move from the Marina Waterfront Park area to the pedestrian bridge and Bay Trail. A permanent 12-foot-wide paved path will be installed within three (3) years after issuance of the Commission's approval if the construction of the proposed hotel has not commenced. If a building permit for the construction of the hotel will be issued by the City of South San Francisco soon after the 6 month mark, following the substantial completion of site grading, the permittees may seek a time extension for the requirement to provide the north-south connector path. In this case, no temporary path would be needed. If the construction of the proposed hotel has begun, the permanent trail will be incorporated into the design of the hotel. Special Condition II.B.3. requires the permittees to submit plans for the design and alignment of the permanent path for approval by or on behalf of the Commission.

Special Condition II.B.2 requires the installation of an approximately 450-square-foot overlook south of the Phase ID building along Gull Drive at the terminus of the slough located to the south of the project site. The requirement of this overlook will replace, and supersede the permit requirement for, an approximately 100-square-foot slough overlook that is required under BCDC Permit No. M1990.037.01. The

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overlook will include a bench and a trash receptacle. Special Condition II.C requires the dedication of an approximately 68,450-square-foot area extending from the Phase ID service road, across the slough to the edge of the applicant's property as open space.

Approximately 400 linear feet of the new alignment of Marina Boulevard will be located within the Commission's jurisdiction. The road will be elevated to preserve views north toward the marina. At the apex of the road, it will be possible to view the Bay eastward. Crosswalks will be added across Marina Boulevard to allow people to move between the public access areas. Special Condition II.A has been included to ensure that the road is constructed in a manner that is consistent with the approved plans. Special Condition II.D requires a view corridor along a portion of Oyster Point Boulevard Gateway, through the intersection with Marina Boulevard and Oyster Point Boulevard to preserve views through this portion of the Marina Waterfront/Beach park to the Bay. As conditioned, the project is consistent with the Bay Plan policies on transportation and views.

The design of the project was adapted following initial communication with the Commission staff in November, 2016. Originally, more of the Marina Waterfront park area was proposed as parking, consistent with the pre-construction conditions. The project will provide more active uses of the site and is designed to provide more connectivity by improving pathways between areas.

3. **Sea Level Rise and Flooding.** According to the Federal Emergency Management Agency (FEMA), the current (2015) 100-year flood elevation for the project site is 11 feet (NAVD88). Portions of the site flood during "King Tide Events" and storms under pre-project conditions. The Phase ID office/R&D building complex has a design life of approximately 80-100 years.

The Marina Waterfront area will be generally located at an elevation of 14.8 feet (NAVD88). This area has a design life of approximately 50-years and will be resilient through 2050 with 24 inches of sea level rise. This area is anticipated to be flooded by a 25-year storm event, which has a 4% chance of occurring, at the end of the century with 66-inches of sea level rise. The shoreline bayward of the Bay Trail along this area will be planted with a "coastal meadow" plant mix that will provide a transitional zone for the salt marsh to migrate upward as sea levels rise. Special Condition II.B.6 requires the permittees to submit an adaptation plan for the required public access areas by December 31, 2050 or when flooding of the public access areas occurs due to sea level rise and associated storm events, whichever occurs first. This is anticipated to occur when the mean higher high water level is 10.63 feet (NAVD88), which is when the areas are predicted to be flooded during a 100-year storm event with 46.8 inches (3.9 feet) of sea level rise, which would occur before the end of the century. According to the State of California Sea Level Rise Guidance 2018 Update, this would occur between 2070 and 2080 under the high emissions scenario. The adaptation plan will include adaptation strategies that are appropriate for the site in the future. This allows time for a preferred adaptation design to be selected and be implemented before the public access areas are

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regularly flooded. Special Condition II.B.6 also requires the permittees to provide a notice of flooding whenever flooding results in the closure of any public access area. These notices will provide an understanding of how frequently the public access is inaccessible due to flooding and will provide insight on which areas need to be adapted and how soon. Special Condition II.B.5 requires the permittees to repair any damages to the public access areas caused by flooding.

The replenished beach area will be approximately 52 feet wide and would have an elevation between 6.2 to 13 feet (NAVD88). The beach has a design life of approximately 50 years and will be flooded by mid-century during a 100-year flood event with 24 inches of sea level rise. On a regular basis, the lower portions of the beach will be frequently flooded by 2050, and unavailable for public use. The beach will be fully inundated by the end of the century with 66 inches of sea level rise. Because the beach is designed to provide a smooth connection to the water, it will be difficult for the beach to be resilient. The upland area is a steep slope, so adaptation of the beach area is limited. While staff has encouraged the permittees to adapt the beach area by further replenishing it, it is not required under Special Condition II.B.6.

The Parcel 5 Park area, North-South connector path, and the Phase ID slough overlook will all be elevated to be resilient to a 100-year flood event at the end of century with a projection of 66-inches of sea level rise.

As conditioned, the public access required by this permit is viable to impacts from flooding due to sea level rise or storms.

4. **Design Review Board.** The project was reviewed by the Commission's Design Review Board (DRB) on July 10, 2017. At this meeting, the DRB raised questions about the type of landscaping and safety at the site. The DRB commented on the need to better connect the public spaces across Marina Boulevard, from the southern shoreline to the Marina Waterfront. Additionally, the DRB discussed the desire for an east-west connection along the slough from the Parcel 5 Park area to Gull Drive. Lastly, the DRB expressed concerns about whether the appropriate soils brought to the site would support the proposed landscaping.

In response to these concerns, the permittees added a crosswalk from the public parking lot to the Parcel 5 Park area. While the Phase ID service road along the slough has been widened, the permittees are not providing access along the slough from the Parcel 5 Park area to Gull Drive. They state that the steep slopes along the slough require retaining walls, making it too difficult to achieve an accessible grade and seismic stability due to the landfill materials.

5. **Comparable Projects.** The Commission considers its previous actions on comparable projects to help inform a decision about whether the proposed public access improvements represent the maximum feasible scope and type consistent with the mixed-use project.

The project will provide approximately 9.99 acres of public access, with approximately 3.18 acres located within the Commission's jurisdiction. Public access areas will occupy approximately 28% of the total project site and approximately 42% of the project area within the 100-foot shoreline band.

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The Commission has, in the past, considered comparable projects that dedicated similar portions of the total project site to public access (Table 1). The Sierra Point five-building office complex in the City of Brisbane, San Mateo County (BCDC Permit No. M2008.019.00) provided approximately 3.7 acres of public access on the undeveloped 22.3-acre project site. The public access is located entirely within the Commission's 100-foot shoreline band and is approximately 16% of the project site. The Burlingame Office Park project in the City of Burlingame, in San Mateo County (BCDC Permit No. 2013.001.01), originally issued on November 24, 2014, and amended through October 18, 2017 was for a six-building office complex and provided approximately 3.7-acres of public access on an approximately 20-acre site, which is 19% of the project site. A public access path previously existed on the site before the project was constructed. The Bay Park Plaza, a two-building office complex, in the City of Burlingame, in San Mateo County (BCDC Permit No. 1982.020.08), originally issued on January 21, 1983, and amended through October 22, 2007, provided approximately 2.93-acres of public access on an approximately 12.7-acre project site. Public access is approximately 23% of the project site and the vast majority is located within the Commission's 100-foot shoreline band. The Wind River five building office complex project in the City and County of Alameda (BCDC Permit No. 1997.009.01), originally issued on November 20, 1997, and amended through November 12, 1998 provided approximately 4.35 acres of public access on an approximately 13-acre site, which is approximately 34% of the project site. There was no public access at the site of the Wind River project prior to the construction of the project. The single-building office complex project at 501 Airport Boulevard in the City of Burlingame in San Mateo County (BCDC Permit No. 1980.003.00), issued on April 28, 1980, provided approximately 0.18-acres of public access on the approximately 0.5-acre site, equaling approximately 36% of the total project site.

**Table 1: Public Access Provided in Comparable BCDC Approved Office Complex Projects**

| Permit                                 | Total Project Size<br>(On Land; Acres) | Size of Public<br>Access (Acres) | Public Access as a<br>Percentage of Total<br>Project | Type of Use                              |
|----------------------------------------|----------------------------------------|----------------------------------|------------------------------------------------------|------------------------------------------|
| M2008.019.02                           | 22.8                                   | 3.7                              | 16%                                                  | Five Building Office<br>Complex          |
| 2013.001.01                            | 20                                     | 3.7                              | 19%                                                  | Six Building Office<br>Complex           |
| 1982.020.08                            | 12.7                                   | 2.93                             | 23%                                                  | Two Building Office<br>Complex           |
| 1997.009.01                            | 13                                     | 4.35                             | 34%                                                  | Five Building Office<br>Complex          |
| 1980.003.00                            | 0.5                                    | 0.18                             | 36%                                                  | Single Building<br>Office Complex        |
| <b>Application<br/>No. 2017.007.00</b> | <b>35.3</b>                            | <b>9.99</b>                      | <b>28%</b>                                           | <b>Three Building<br/>Office Complex</b> |

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Page 33

The project differs from other previously-approved office park developments, as it includes a potential future hotel development. In addition, the public access improvements include improving existing BCDC-required public access. However, compared to other similar developments, the project provides a comparable portion of the site for public access. In addition to the quantity of access provided, the qualitative improvements to existing public access were considered in assessing whether the project provides maximum feasible public access.

As conditioned, the project authorized herein is consistent with the McAteer-Petris sections and relevant San Francisco Bay Plan policies regarding Public Access, Recreation, Transportation, and Appearance, Design, and Scenic Views.

**D. Commission Advisory Boards**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not review the project because Commission staff determined that the fill proposed does not raise seismic safety issues.
2. **Design Review Board.** The project was reviewed by the Commission's Design Review Board on July 10, 2017.

**E. Environmental Review.**

1. **Original Permit.** On March 23, 2011, the City of South San Francisco, acting as lead agency, certified the final Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for the Oyster Point Specific Plan. This document reviewed Phases IC and ID on a project level and Phases IIC, IID, IIID, and IVD on a programmatic level. The review of these subsequent phases will be the subject of a future permit application for the Commission's approval.

On December 11, 2017, the City of South San Francisco circulated a subsequent EIR to analyze changes to the design of Phases IID, IIID, and IVD. These are future phases that are not part of the proposed project but will connect to the proposed project. The three phases were planned to provide approximately 1,750,000 square feet of office/R&D space. The updated proposal is for Phase IID to include approximately 1,070,000 square feet of office/R&D space. Phases IIID and IVD would change the zoning in these locations from office/R&D to residential and retail/amenity. These phases would include approximately 1,191 residential units and 22,000 square feet of flexible use retain and/or amenity space.

The review of these phases will be the subject of a future permit application for the Commission's approval. However, the request for the re-entitlement of these phases has been put on hold at the request of OPD.

**F. Amendments**

- ~~21~~ **Amendment No. One.** The project authorized in Amendment No. One includes the installation of two interim floating docks at the West Basin of Oyster Point Marina, the first approximately 1,040 square feet and the second approximately 1,120 square feet, to connect Docks 2 to 3 and 4 to 5, respectively, for approximately one year while the Bay Trail improvements authorized in this permit are completed. In

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Kilroy Realty TRS, Inc. and City of South San Francisco

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total, the project will result in the placement of 2,160 square feet of fill in the Bay for approximately one year. While the interim floating docks are being used, the Marina gates to Docks 1-4 will be closed to tenants. The interim docks have been designed to be the minimum amount of fill necessary with no alternative upland location to provide the public with safe interim access to the Marina's existing docks while the public benefits from the new Bay Trail are constructed. Special Condition II.A.1.d has been included to ensure the work is conducted generally in accordance with the plans submitted and with the application for Amendment No. One. In addition, Special Condition II.H has been included to ensure that the installation and construction of the interim docks is protective of Bay resources, including that the docks' pressure treated wood must be encased in a benign material, consistent with recommendations from the California Department of Fish and Wildlife. The project authorized by Amendment No. One to this permit involves less than 20,000 square feet of expansion of boat docking facilities within an existing marina, which as defined in Regulation Section 10601(a)(1), is a "minor repair or improvement," for which the Executive Director may issue an amendment to an existing permit, pursuant to Government Code Section 66632(f) and Regulation Section 10822.

In sum, as conditioned, the project authorized by Amendment No. One is consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that it will not adversely affect the Bay or public access to or enjoyment of the Bay.

2. **Amendment No. Two.** Amendment No. Two modifies the requirements of Special Condition II.B.3 ("North-South Connector Path") at the request of the permittees and in response to substantiated construction delays. Special Condition II.B. 3 has been modified to require the installation of an Interim North-South Connector path between the southern shoreline and Marina Boulevard to be completed within six months following the completion of Phase IC of the project. The new Interim North-South Connector path completion date is a time extension from the initial completion date, which was within six-months following the completion of site grading. The interim connector path is intended to be replaced by a permanent path that will be integrated into the design of a hotel at Parcel 6. The modified condition allows for the interim path to be closed to allow for construction of the hotel, and for the replacement permanent path to open to the public upon opening of the hotel, and no later than 36 months following closure of the interim path. Both paths are to be constructed of a durable, all weather accessible material. Because the modifications to the permit terms do not materially alter the project authorized herein, and the project remains consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that it will not adversely affect the Bay or public access to or enjoyment of the Bay, the Executive Director may issue an amendment to an existing permit, pursuant to Government Code Section 66632(f) and Regulation Section 10822.

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Kilroy Realty TRS, Inc. and City of South San Francisco

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Page 35

- F. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

**IV. Standard Conditions**

- A. **Permit Execution.** This amended permit shall not take effect unless the permittee(s) execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur, or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute, and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.
- D. **Permit Runs with the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.

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Kilroy Realty TRS, Inc. and City of South San Francisco

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- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee(s) or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

**PERMIT NO. 2017.007.02 (AMENDMENT NO. TWO)**  
Kilroy Realty TRS, Inc. and City of South San Francisco

July 30, 2021  
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**M. Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

**N. Best Management Practices**

- 1. Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
  - 2. Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
- O. In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

DocuSigned by:  
  
FD186E908010417...

LAWRENCE J. GOLDZBAND  
Executive Director  
San Francisco Bay Conservation and  
Development Commission

LIG/AD/ra

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board,  
Attn.: Certification Section  
Environmental Protection Agency

**PERMIT NO. 2017.007.02 (AMENDMENT NO. TWO)**  
Kilroy Realty TRS, Inc. and City of South San Francisco

July 30, 2021  
Page 38

\* \* \* \* \*

**Receipt acknowledged, contents understood and agreed to:**

Executed at South San Francisco

Kilroy Realty TNC, Inc.  
**Permittee**

On 8/2/2021 | 2:08:12 PM PDT

By: DocuSigned by:  
Jonas Vass  
455D8E1BA1D54AC...

Jonas Vass  
**Print Name**  
Sr VP Development  
**Title**

\* \* \* \* \*

**Receipt acknowledged, contents understood and agreed to:**

Executed at South San Francisco

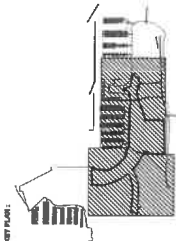
City of South San Francisco  
**Permittee**

On 8/24/2021 | 7:46:41 AM PDT

By: DocuSigned by:  
Mike Futrell  
6852134787CA4DB...

Mike Futrell  
**Print Name**  
City Manager  
**Title**

OYSTER POINT DEVELOPMENT



BCDC Permit # 2017.007.00

Exhibit A PUBLIC ACCESS AND OPEN SPACE

JAMES CORNER FIELD OPERATIONS

300 CALIFORNIA STREET, SUITE 100, SAN FRANCISCO, CA 94101

OYSTER POINT DEVELOPMENT, LLC

OYSTER POINT DEVELOPMENT PHASE 1C

DATE: 04.10.2018 SCALE: 1" = 80'-0"

DRAWING NO. 1

ALL RIGHTS RESERVED. This drawing is the property of James Corner Field Operations and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of James Corner Field Operations.

**BURNISHING LEGEND**

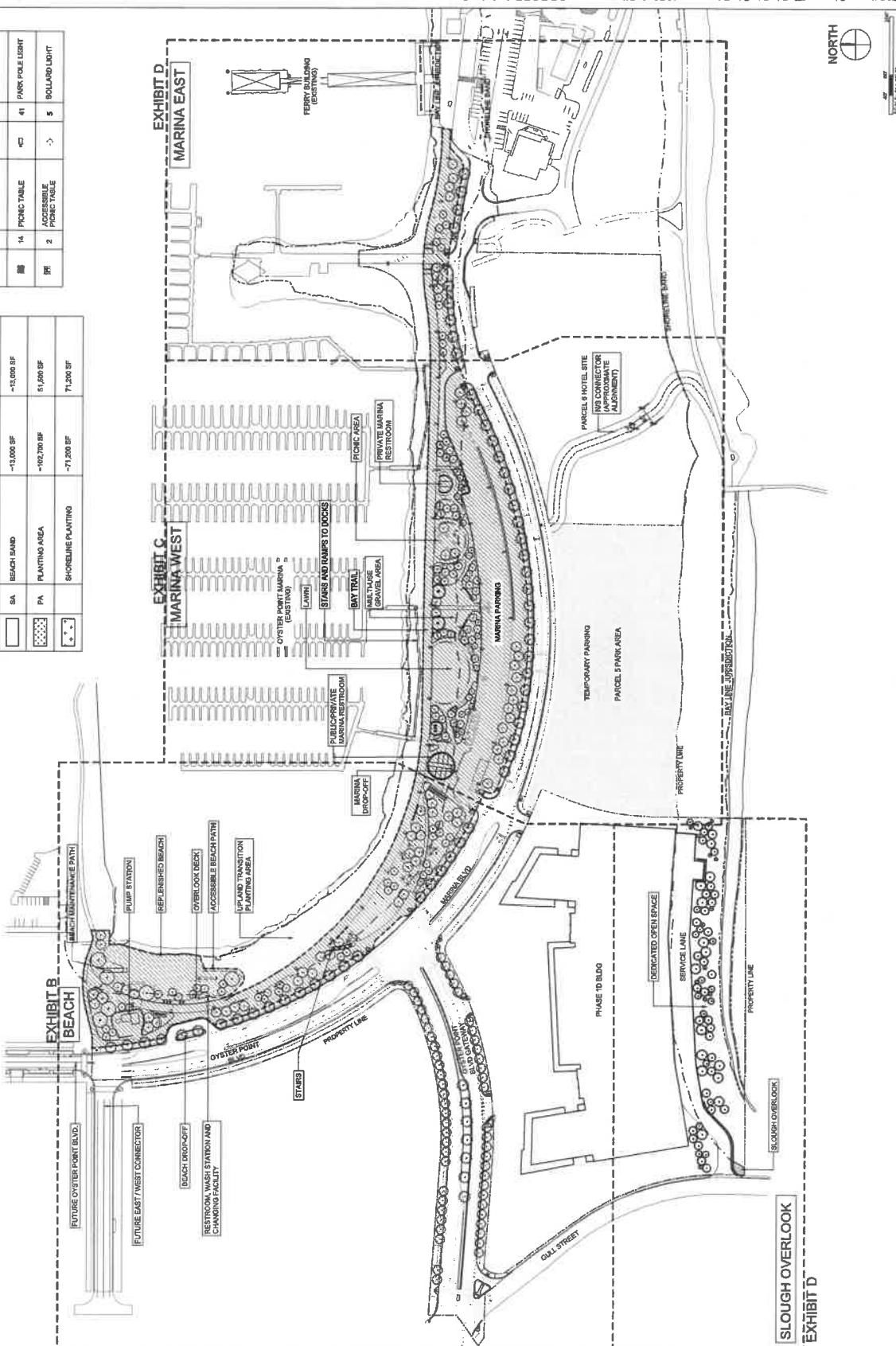
| SYMBOL | QTY | DESCRIPTION         | SYMBOL | QTY | DESCRIPTION           |
|--------|-----|---------------------|--------|-----|-----------------------|
| ○      | 11  | TRASH AND RECYCLING | ○      | 1   | COAL RECEPTACLE       |
| ○      | 1   | BENCH TYPE 1        | ○      | 25  | RECYCLABLE BOLLARDS   |
| ○      | 1   | BENCH TYPE 2        | ○      | 24  | FIXED BOLLARDS        |
| ○      | 1   | BENCH TYPE 3        | ○      | 2   | DRAINING FOUNTAIN     |
| ○      | 1   | BENCH TYPE 4        | ○      | 5   | DOG WASTE BAG STATION |
| ○      | 1   | BENCH TYPE 5        | ○      | 41  | PARK POLE LIGHT       |
| ○      | 1   | BENCH TYPE 6        | ○      | 5   | BOLLARD LIGHT         |

**MATERIALS LEGEND**

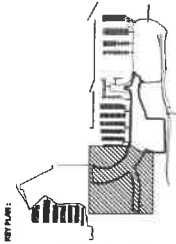
| SYMBOL | KEY | DESCRIPTION                   | QUANTITY WITHIN PUBLICLY ACCESSIBLE OPEN SPACE |
|--------|-----|-------------------------------|------------------------------------------------|
| ○      | A9  | BAW TRAIL                     | ~42,100 SF, 2,200 LF                           |
| ○      | OC  | CONCRETE TRAILS AND PATHWAYS  | ~15,000 SF                                     |
| ○      | DO  | STABILIZED DECOMPOSED GRANITE | ~11,100 SF                                     |
| ○      | WD  | WOOD DECK                     | ~120 SF                                        |
| ○      | CS  | CONCRETE SIDEWALK             | ~27,000 SF                                     |
| ○      | SA  | BEACH SAND                    | ~13,000 SF                                     |
| ○      | PA  | PLANTING AREA                 | ~102,700 SF                                    |
| ○      | PA  | SHORELINE PLANTING            | ~71,200 SF                                     |

**LEGEND**

| SYMBOL | DESCRIPTION                             |
|--------|-----------------------------------------|
| ○      | PUBLIC ACCESS AREA (15,000 SF)          |
| ○      | PUBLIC ACCESS AREA (15,000 SF)          |
| ○      | DEDICATED OPEN SPACE (86,400 SF)        |
| ○      | 100' SHORELINE BAND                     |
| ○      | MARSHLINE                               |
| ○      | PUBLICLY ACCESSIBLE OPEN SPACE BOUNDARY |
| ○      | PROPERTY LINE                           |



OYSTER  
POINT  
DEVELOPMENT



BCDC Permit  
# 2017.007.00

Exhibit B

LANDSCAPE ARCHITECT:  
**JAMES CORNER FIELD OPERATIONS**  
1000 MARKET STREET, SUITE 100, SAN FRANCISCO, CA 94102  
CONTACT: JAMES CORNER  
TEL: 415.398.1234  
WWW.JAMESCORNER.COM  
PROJECT: OYSTER POINT DEVELOPMENT, LLC  
CITY OF SOUTH SAN FRANCISCO  
SOUTH SAN FRANCISCO, CA 94080

CITY OF SOUTH SAN FRANCISCO  
SOUTH SAN FRANCISCO, CA 94080  
PROJECT NAME:  
**OYSTER POINT DEVELOPMENT  
PHASE 1C**

DATE: 04.10.2018  
SCALE: 1" = 40'-0"  
DRAWN BY: JAMES CORNER  
CHECKED BY: JAMES CORNER  
DATE: 04.10.2018

**MATERIAL AND FURNISHING  
PLAN - BEACH**

2

NOT TO SCALE  
THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION WITHOUT THE APPROVAL OF THE CITY OF SOUTH SAN FRANCISCO. THE CITY OF SOUTH SAN FRANCISCO IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS PLAN.

MATERIALS LEGEND

| SYMBOL | KEY | DESCRIPTION                   |
|--------|-----|-------------------------------|
|        | BT  | BAY TRAIL                     |
|        | CT  | CONCRETE TRAIL AND PATHWAYS   |
|        | SDG | STABILIZED DECOMPOSED GRANITE |
|        | WD  | WOOD DECK                     |
|        | CS  | CONCRETE SIDEWALK             |
|        | SA  | BEACH SAND                    |
|        | PA  | PLANTING AREA                 |
|        | SP  | SHORELINE PLANTING            |

FURNISHING LEGEND

| SYMBOL | DESCRIPTION             | SYMBOL | DESCRIPTION           |
|--------|-------------------------|--------|-----------------------|
|        | BENCH TYPE 1            |        | TRASH AND RECYCLING   |
|        | BENCH TYPE 2            |        | COAL RECEPTACLE       |
|        | BENCH TYPE 3            |        | REUSABLE BALLAST      |
|        | BBQ GRILL               |        | FIXED BOLLARDS        |
|        | STAIRS HANDRAIL         |        | DRINKING FOUNTAIN     |
|        | BICYCLE RACKS           |        | DOG WASTE BAG STATION |
|        | PICNIC TABLE            |        | PARK POLE LIGHT       |
|        | ACCESSIBLE PICNIC TABLE |        | BOLLARD LIGHT         |

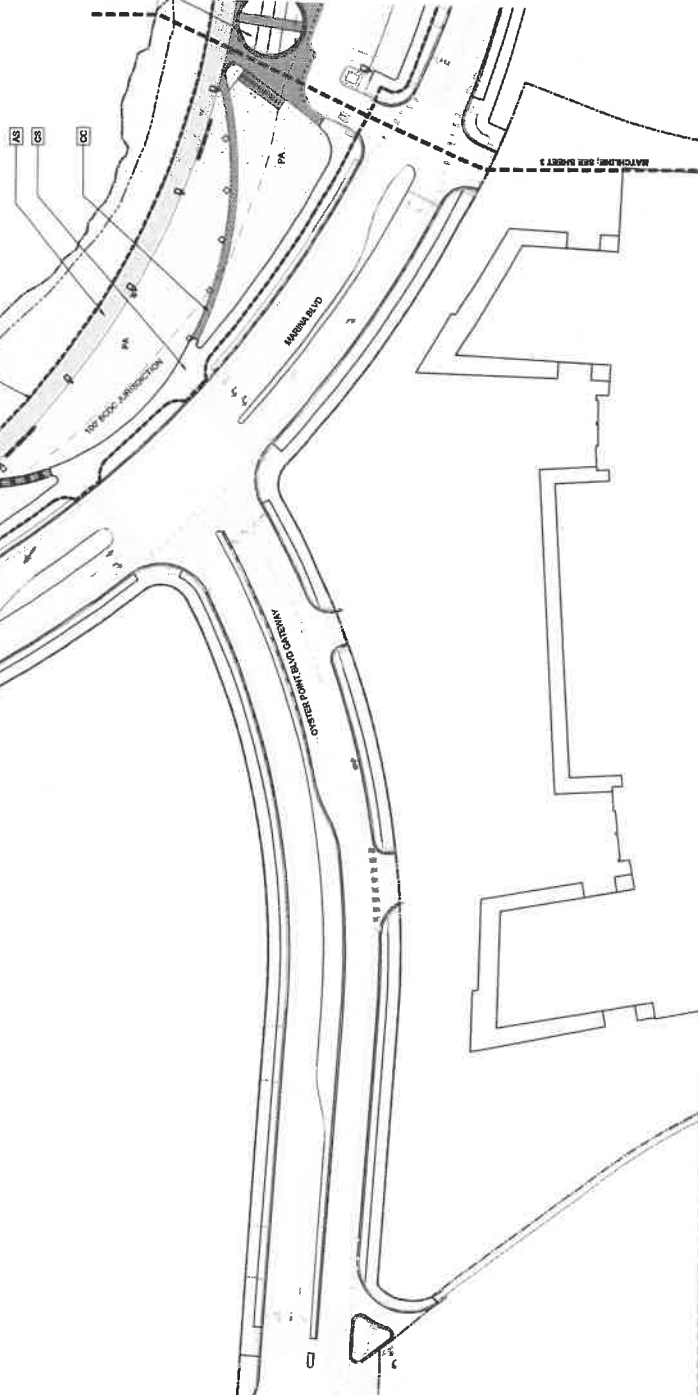
LEGEND

- 10' SHORELINE BAND
- MARKER LINE
- PUBLICLY ACCESSIBLE OPEN SPACE BOUNDARY
- PROPERTY LINE



Scale: 1" = 40'-0"

FUTURE OYSTER POINT BLVD  
FUTURE EAST/WEST CONNECTOR  
BEACH OVERLOOK  
OVERLOOK DECK  
RESTROOM, WASH STATION AND CHANGING FACILITY  
REPLENISHED BEACH  
BEACH MAINTENANCE PATH  
PUMP STATION  
ACCESSIBLE BEACH PATH  
UPLAND TRANSITION PLANTING AREA  
STAIRS  
PUBLIC ACCESS AREA  
BOUNDARY



BCDC Permit  
# 2017,007.00

## Exhibit C

LANDSCAPE ARCHITECT:  
**JAMES CORNER FIELD OPERATIONS**  
100 BATTERY STREET, SUITE 100, SAN FRANCISCO, CA 94111

[illegible]

CLIENT: OYSTER POINT DEVELOPMENT, LLC  
86 OYSTER POINT BLVD, SUITE 300  
DUBLIN, CA 94568  
CITY OF SOUTH SAN FRANCISCO  
TO GRAND AVENUE,  
CITY OF SAN FRANCISCO, CA

## OSTER POINT DEVELOPMENT PHASE IIC

DATE: 04.10.2018 SCALE: 1" = 400'0"

PROJECT TITLE:  
MATERIAL AND FURNISHING  
PLAN - MARINA EAST

ORDER NO.

3

| MATERIAL & LEGEND                                                                 |    | DESCRIPTION                  |
|-----------------------------------------------------------------------------------|----|------------------------------|
|  | AB | BAY TRAIL                    |
|  | CC | CONCRETE TRAILS AND PATHWAYS |
|  | DG | STYLIZED DECOMPOSED GRANITE  |
|  | WD | WOOD DECK                    |
|  | CS | CONCRETE SIDEWALK            |
|  | SA | BEACH SAND                   |
|  | PA | PLANTING AREA                |
|  |    | SHORELINE PLANTING           |

| SUNSHINE LEGEND                                                                   |                         |
|-----------------------------------------------------------------------------------|-------------------------|
| SYMBOL                                                                            | DESCRIPTION             |
|  | BENCH TYPE 1            |
|  | BENCH TYPE 2            |
|  | BENCH TYPE 3            |
|  | BIG GRILL               |
|  | STAIRS HANDRAIL         |
|  | BIKE RACKS              |
|  | PICNIC TABLE            |
|  | ACCESSIBLE PICNIC TABLE |
|  | BOLLARD LIGHT           |
|  | BOLLARD LIGHT           |

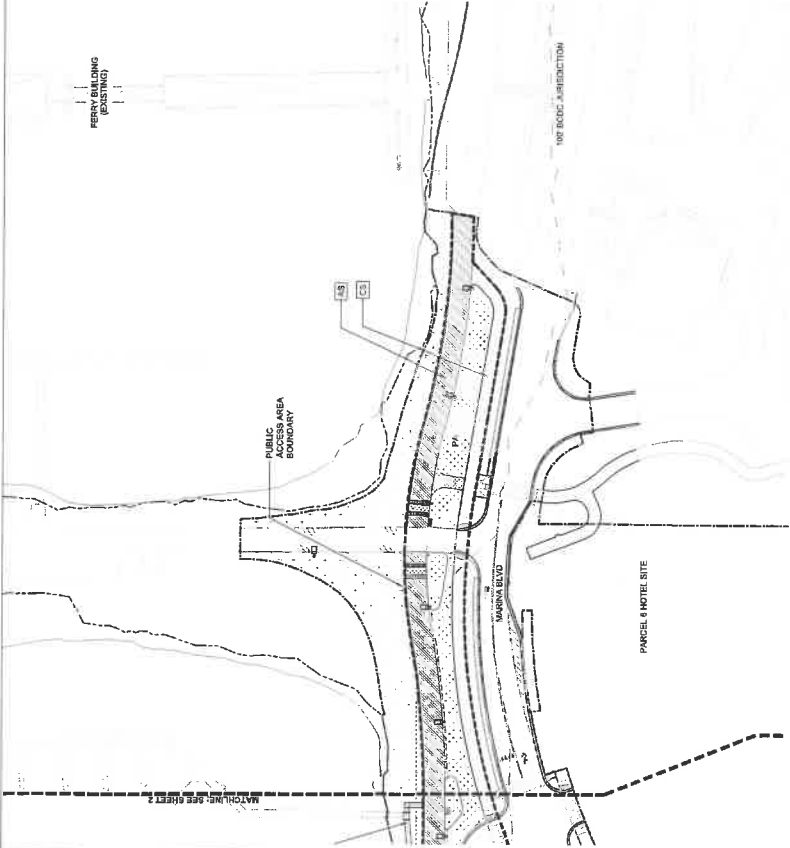
The diagram shows a cross-section of a shoreline with several markers and labels. From left to right, the elements are:

- A vertical line labeled "EQUINOXIAL TIDE" at the top.
- A dashed line labeled "100' SHORELINE BAND" at the top.
- A solid line labeled "MARSHLINE" at the top.
- A line with small circles labeled "PUBLICLY ACCESSIBLE OPEN SPACE BOUNDARY" at the top.
- A line with small squares labeled "PROPERTY LINE" at the top.

At the bottom right, there is a small text box that reads: "Source: NOAA, U.S. Department of the Interior."

[illegible]

DocuSign Envelope ID: 5FB47A5D-3B2A-438F-A5B8-8290894D0B9F



**MATERIALS LEGEND**

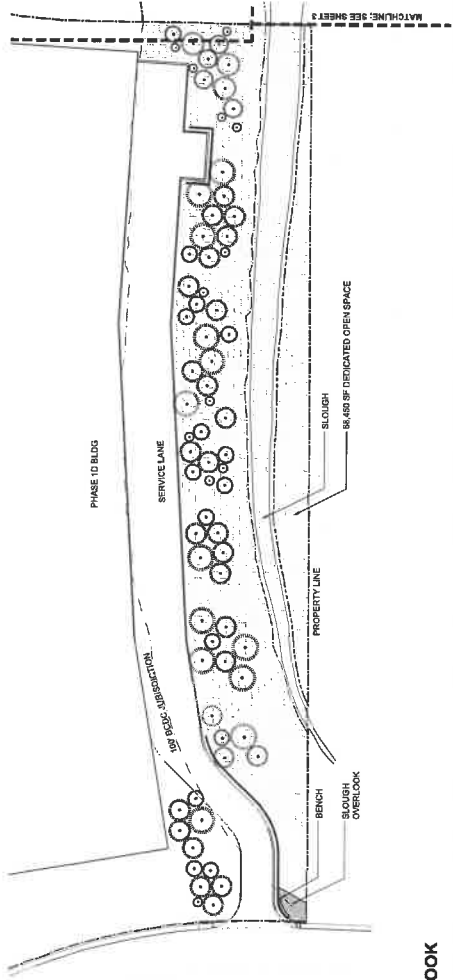
| SYMBOL | KEY | DESCRIPTION                   |
|--------|-----|-------------------------------|
|        | BT  | BAY TRAIL                     |
|        | CC  | CONCRETE TRAILS AND PATHWAYS  |
|        | DS  | STABILIZED DECOMPOSED GRANITE |
|        | WD  | WOOD DECK                     |
|        | CS  | CONCRETE SIDEWALK             |
|        | SA  | BEACH SAND                    |
|        | PA  | PLANTING AREA                 |
|        |     | SHORELINE PLANTING            |

**FURNISHING LEGEND**

| SYMBOL | DESCRIPTION             | SYMBOL | DESCRIPTION           |
|--------|-------------------------|--------|-----------------------|
|        | BENCH TYPE 1            |        | TRASH AND RECYCLING   |
|        | BENCH TYPE 2            |        | COAL RECEPTACLE       |
|        | BENCH TYPE 3            |        | REMOVABLE SEALS       |
|        | BBQ GRILL               |        | FIXED BOLLARDS        |
|        | STAIRS HANDRAIL         |        | DRINKING FOUNTAIN     |
|        | BICYCLE RACKS           |        | DOG WASTE BAG STATION |
|        | PICNIC TABLE            |        | PARK POLE LIGHT       |
|        | ACCESSIBLE PICNIC TABLE |        | BOLLARD LIGHT         |

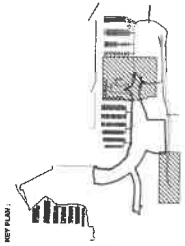
**LEGEND**

- 100' SHORELINE BAND
- MARSHLINE
- PUBLICLY ACCESSIBLE OPEN SPACE BOUNDARY
- PROPERTY LINE



**SLOUGH OVERLOOK**

**OYSTER POINT DEVELOPMENT**



**BCDC Permit # 2017.007.00**

**Exhibit D**

**LANDSCAPE ARCHITECT:**  
**JAMES CORNER FIELD OPERATIONS**  
48 SATTERY STREET, SUITE 110, SAN FRANCISCO, CA 94111

**CONSULTANT TEAM:**  
**BECKER ENGINEERS**  
1000 CALIFORNIA STREET, SUITE 100, SAN FRANCISCO, CA 94109  
**GREEN & ASSOCIATES**  
200 BROADWAY, SUITE 212, SAN FRANCISCO, CA 94111  
**NEW STRUCTURAL**  
1000 CALIFORNIA STREET, SUITE 100, SAN FRANCISCO, CA 94109  
**PAUL & ASSOCIATES**  
1000 CALIFORNIA STREET, SUITE 100, SAN FRANCISCO, CA 94109

**CLIENT:**  
**OYSTER POINT DEVELOPMENT, LLC**  
300 CALIFORNIA STREET, SUITE 100, SAN FRANCISCO, CA 94109  
**CITY OF SOUTH SAN FRANCISCO**  
1000 CALIFORNIA STREET, SUITE 100, SAN FRANCISCO, CA 94109

**PROJECT NAME:**  
**OYSTER POINT DEVELOPMENT**  
**PHASE 1C**

**DESIGNED BY:**  
**DATE:** 04.10.2018  
**SCALE:** 1" = 40'-0"

**DRAWING TITLE:**  
**MATERIAL AND FURNISHING PLAN - MARINA EAST AND SLOUGH OVERLOOK**

**DRAWING NO. 4**

**NOTES:**  
1. This drawing is a preliminary drawing and is not to be used for construction without the approval of James Corner Field Operations.  
2. All dimensions are in feet and inches, unless otherwise noted.  
3. All materials and finishes are to be approved by the City of South San Francisco.  
4. All materials and finishes are to be approved by the City of South San Francisco.

**BCDC Permit  
# 2017.007.00**

## Exhibit E

LANDSCAPE ARCHITECT:  
**JAMES CORNER FIELD OPERATIONS**  
300 BATTERY STREET, SUITE 110, SAN FRANCISCO, CA 94111

**CONSULTANT Firms:**  
**GLUCKSMITH ENGINEERS**  
 6 E. PALAZZO, INC.  
 REYNOLDS ASSOC.  
 LBL LIGHTING  
 PPM STRUCTURAL  
 SLEIGHT K&M

3909 N. LAS FORTES BLVD., SUITE 115, PUEBLO, CO. 81008  
 4752 EAST CHAMPAIN AVENUE, ORANGE COUNTY, CA 92669  
 204 VICTORIAN AVENUE, BERKELEY, CA 94705  
 300 BAYVIEW ST., SUITE 201, SAN FRANCISCO, CA 94133  
 51 HARRISON STREET, SUITE 500, OAKLAND, CA 94607  
 3930 LA BELLA, SUITE 200, SAN MATTEO, CA 94403

AGENT:  
HYSTER POINT DEVELOPMENT, LLC  
5 OYSTER POINT BLVD, SUITE 500  
SOUTH SAN FRANCISCO, CA 94080  
CITY OF SOUTH SAN FRANCISCO

## OSTER POINT DEVELOPMENT PHASE I C

### ACKNOWLEDGMENTS

[illegible]

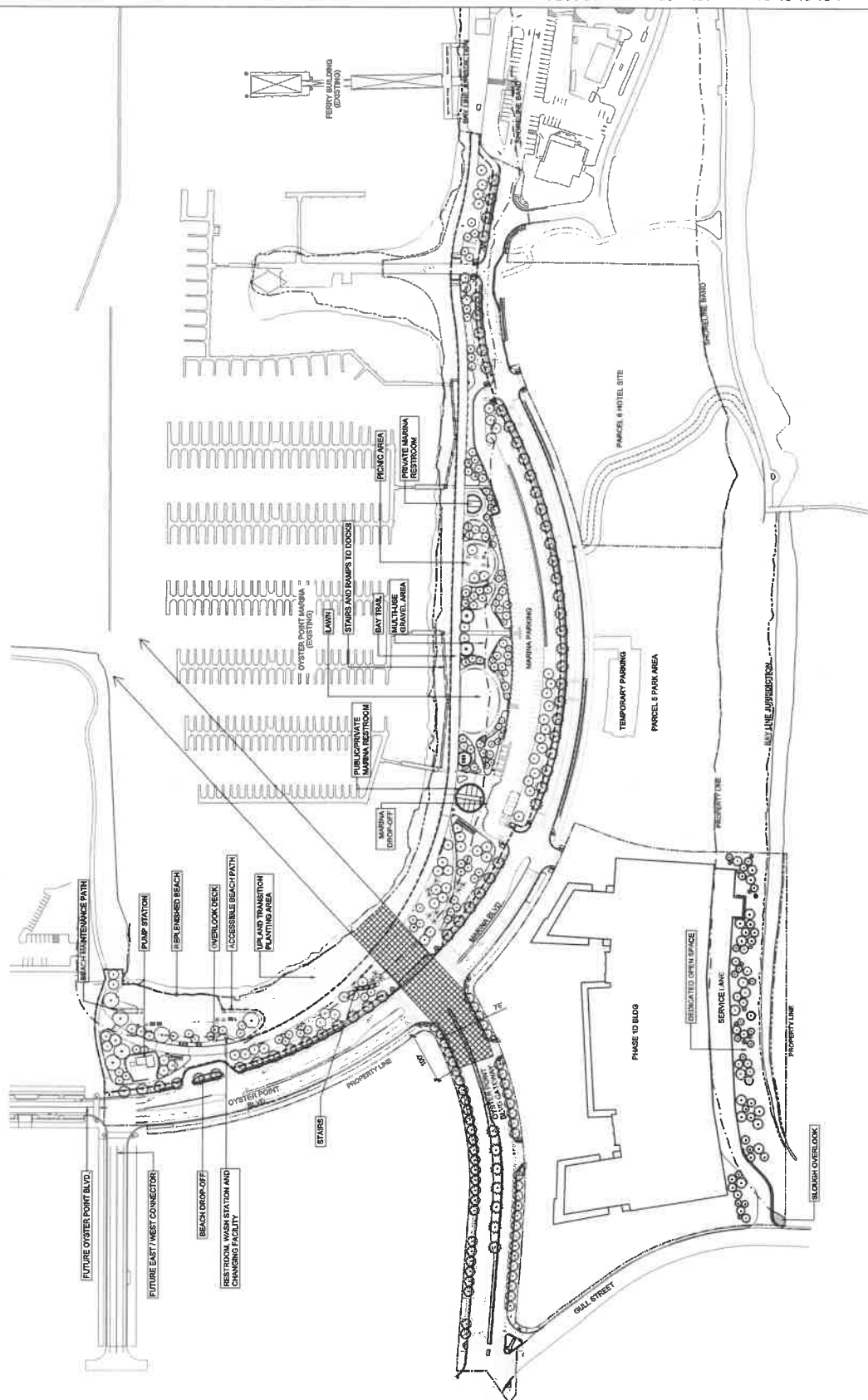
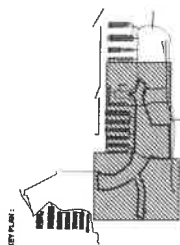
DATE: 04.10.2018 SCALE: 1"=80'-0"

## NEW CORRIDOR

CONCLUSIONS

4

**English Illustrated**  
new drawings, concepts, designs and ideas are the property of James O'Connor Field Associates. They may not be copied, reproduced, distributed or used in connection with any work other than the specific project for which they were prepared. © 1986 by J.O.F., without the prior written authorization of James O'Connor Field.



NORTH

47 50  
SCALE: 1" = 50.0'

Exhibit C**DEVELOPMENT AGREEMENT TERM SHEET****Development Agreement (DA) - Term Sheet**

**Seller:** City of South San Francisco

**Buyer:** Ensemble Investments, Inc.

**Property:**

| Property Address                                      | Parcel Number |
|-------------------------------------------------------|---------------|
| 367 Marina Boulevard<br>South San Francisco, CA 94080 | 015-010-970   |

**Property Plan:** Up to 350 rooms; full-service hotel facility which is the quality of a “AAA” (or similar rating) four diamond or higher hotel, comparable to a Hilton Curio or Marriott Autograph Collection hotel.

| Term                                                                                                                                                                                                                                                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.) Execute and implement an Operations & Maintenance Agreement with the City providing the City and/or the Water Board with financial assurance for completion of the Buyer’s Post-Closing Mitigation Measures.                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 2.) Execute and implement a Maintenance and Security Agreement of site after execution of PSA.                                                                                                                                                                                   | <ul style="list-style-type: none"> <li>- Maintain erosion control of site.</li> <li>- Installation of temporary fence within timeframe of installation of temporary BCDC trail.</li> <li>- Installation of temporary frontage improvements.</li> </ul>                                                                                                                                                                                                                                                                                                                      |
| 3.) Developer to construct and maintain a temporary north-south Bay Trail connection and a permanent north-south Bay Trail connection on site, at Developer’s expense, as described in San Francisco Bay Conservation and Development Commission (“BCDC”) Permit No. 2017-007-02 | <ul style="list-style-type: none"> <li>- ADA compliant</li> <li>- Complies with BCDC standards and existing Permit No. 2017.007.02, and any amendments.</li> <li>- Ensemble to agree to any amendments BCDC places on the condition.</li> <li>- Temporary path to be constructed no later than 6 months following the completion of Phase IC work, which is currently estimated to be completed by July 1, 2022; parties anticipate that temporary path will be completed prior to finalizing the DA, in which case the DA will only address the permanent path.</li> </ul> |

|                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>- Permanent path to be constructed within the hotel development and open to the public upon opening of the hotel, but no later than 36 months after the closure of the temporary path.</li> <li>- constructed of a durable, all-weather accessible material.</li> </ul>                                                                                                                                                                                                                                                      |
| 4.) Developer to enter into a Transient Occupancy Tax (TOT) rebate Agreement with City.                                                                                                                                                            | <p>Agreement Parameters:</p> <ul style="list-style-type: none"> <li>- 50 TOT rebate for fifteen years;</li> <li>- The total TOT rebate is capped at the 15-year projection of 44,530,000</li> <li>- If the hotel exceeds revenue forecasts, the agreement has a condition to allow "homerun insurance," for the City to also benefit in the event of a sale; City to receive 5% of Net Proceeds of a Property Sale (defined as selling greater than 50% ownership) limited and reduced to the extent Investors receive a minimum 20.00% at time of sale.</li> </ul> |
| 5.) Condition that memorializes Developer's commitment to agree to a future Community Facilities District (CFD) assessment of up to \$1 per square foot, if formed within 120 months of the execution of the DA.                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 6.) Developer is responsible for the installation of a new pump station onsite, to accommodate for additional flow from the hotel, as detailed in the 2011 Successor Agency/ City DDA (Section 3.3.2a "Phase IIC Improvements").                   | <ul style="list-style-type: none"> <li>- The initial cost of the new sewer pump station is shared between the Successor Agency (\$1,822,124) and City (\$839,490); the Successor Agency currently is holding these Successor Agency funds in a dedicated reserve account. Ensemble will agree to contribute \$250,000 towards the construction costs, with the City/Successor Agency being responsible for additional cost-overruns. This would include design and installation (but not maintenance).</li> </ul>                                                   |
| 7.) Developer is responsible for allowing access for methane monitoring of the closed landfill. Developer is also obligated to ensure that the design of the hotel and surrounding site will accommodate and permit access for methane monitoring. | <ul style="list-style-type: none"> <li>- Must allow access for any third party consultant or Successor Agency representatives to maintain methane monitoring subject to applicable regulatory monitoring procedures.</li> </ul>                                                                                                                                                                                                                                                                                                                                     |

|                                                                            |  |
|----------------------------------------------------------------------------|--|
| 8.) Developer and City to adhere to all dates addressed in Master Schedule |  |
|----------------------------------------------------------------------------|--|

**Master Development Schedule - Updated October 11, 2021**

| <b>Activity</b>                                                            | <b>Milestone</b>                                                                                                                                 |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Submit application for Precise Plan                                        | No later than May 1, 2022                                                                                                                        |
| Receive Development Agreement Approval (first reading)                     | No later than December 16, 2022                                                                                                                  |
| Receive Entitlement Approval                                               | No later than December 16, 2022                                                                                                                  |
| Closing of Escrow                                                          | No later than December 31, 2022                                                                                                                  |
| Submit application for Building Permit                                     | No later than December 31, 2023.                                                                                                                 |
| Delivery of Proof of an Approved Construction Plan from a reputable lender | Within 18 months of submitting for Building Permit, but no later than June 30, 2025.                                                             |
| Delivery of a Final Construction Contract                                  | Within 18 months of submitting for Building Permit, but no later than June 30, 2025.                                                             |
| Construction Commences                                                     | Within 19 months of submitting for building permit, but no later than July 31, 2025.                                                             |
| Substantial Completion of Construction                                     | Within 36 months of construction commencement; targeted for September 2027 (26-month schedule), but no later than June 2028 (35-month schedule). |
| Estimated Opening of hotel                                                 | Targeted November 2027, but no later than August 2028.                                                                                           |

Note that all target dates are subject to automatic extension for delays due to factors beyond Developer's reasonable control in accordance with the force majeure provisions of the Development Agreement.

Exhibit D

**GRANT DEED**

Recording Requested by  
and when Recorded, return to:

City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383 &  
27388.1(a)(2)

SUBJECT TO DOCUMENTARY  
PER REVENUE AND TAXATION CODE §  
11911

APN: 015-010-970

(SPACE ABOVE THIS LINE RESERVED  
FOR RECORDER'S USE)

**GRANT DEED**

**RECITALS**

A. The City of South San Francisco ("Grantor") is the owner of the Property (as defined below).

B. Ensemble Investments, LLC ("Grantee") agrees to purchase the Property, and Grantor agrees to sell the Property to Grantee, subject to the terms and conditions of the Purchase and Sale Agreement ("PSA") approved by the City Council on October 27, 2021 by Resolution No. \_\_\_\_\_; and

F. Grantor and Grantee agree that the purpose of this Grant Deed is to convey the Property to the Grantee pursuant to the terms set forth in the PSA.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee all that real property located in the City of South San Francisco, County of San Mateo, State of California and more particularly described in Exhibit A ("Property"), attached hereto and incorporated into this grant deed ("Grant Deed") by this reference.

This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

**SIGNATURES ON FOLLOWING PAGES**

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of  
\_\_\_\_\_, 2022.

GRANTOR:

THE CITY OF SOUTH SAN FRANCISCO

By: \_\_\_\_\_  
Mike Futrell  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sky Woodruff  
City Attorney

SIGNATURES MUST BE NOTARIZED

EXHIBIT A to Grant Deed

LEGAL DESCRIPTION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

) ss.

County of San Mateo )

On , 20\_\_\_\_ before me, , a Notary Public, in

and for said State and County, personally appeared , who proved to

me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

) ss.

County of San Mateo )

On , 20\_\_\_\_ before me, , a Notary Public, in

and for said State and County, personally appeared , who proved to

me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC

Exhibit E

**POSTCLOSURE RESPONSIBILITY MATRIX**

Exhibit F**BUYER'S POST-CLOSING MITIGATION MEASURES**

Buyer shall perform, at Buyer's sole expense, each of Buyer's Post-Closing Mitigation Measures identified in this Exhibit F. The measures identified herein are not intended as Buyer's sole post-closing obligations with respect to the Pre-Existing Property Conditions and shall not reduce or otherwise diminish Buyer's other obligations under the Agreement with respect to such conditions or otherwise. Capitalized terms not specifically defined herein shall have the meaning prescribed in the Agreement.

**A. Site Security**

1. Provide site security for the Property and all building(s) at the Property. Security features should be designed to prevent unauthorized access by the general public. Building security features may include barriers and/or restricted access signage and alarm systems.

**B. Engineering Measures - Fill /Capping/Construction Activities**

1. Install a minimum of nine (9) feet of clean fill or as otherwise engineered by a qualified civil engineer and subject to City Public Works approval and building plan check within the building footprint area above the landfill cap. Outside of the building footprint, utility trenches shall be located at least twelve (12) inches above the top of the landfill cap within clean fill, except to the extent necessary to connect to existing utility connections. Any utility connections within the cap or below the cap shall occur in trenches with a protective clay layer and clean backfill as engineered by a qualified civil engineer subject to City Public Works approval and building plan check.
2. Install a geotextile fabric (as a marker) on top of the erosion resistant layer (i.e. the landfill cap) so the top of the cap can be identified during future construction activities.
3. Install all landscaping and irrigation systems at elevations within the newly-installed fill layer above the cap to protect cap integrity.
4. Grade/maintain the Property to prevent surface water accumulation. Install and maintain survey monuments on the Property to monitor landfill settlement. Quarterly inspections are required to ensure monuments are intact and usable and any repairs or replacement are performed as necessary. Installation of at least two permanent survey monuments are required so that the location and elevation of refuse, final cover, and landfill gas system components can be determined throughout the post-closure period. Additionally, monuments will be surveyed every five years and settlement maps will be produced throughout the post-closure period or until settlement has stopped.

**C. Engineering Measures - MMS/Building**

1. Design, install and operate a methane mitigation and monitoring system (MMS) approved in advance by the Water Board and City in building structures. The MMS shall meet the requirements of Title 27 CCR Sections 20931 and 21190, for structures on landfilled areas,

and of those listed in the PCMMP. The MMS shall also be designed in general accordance with methane mitigation standards used by Los Angeles County Public Works Gas Hazard Mitigation Policy and Standards (<https://dpw.lacounty.gov/epd/swims/onlineservices/methane-mitigation-standards.aspx>).

At a minimum, the MMS shall include a vapor barrier membrane ( VBM ) combined with a horizontal collection and venting system below the VBM. The venting system vents vapors through vertical riser piping that extends from beneath the building to above the roof level. Mechanical blowers will be on standby for use as an active venting system in the event elevated methane levels are detected by electronic sensors installed at various locations within the buildings. The MMS shall also be designed to mitigate potential vapors of other contaminants, including VOCs.

2. Design and install trench dams in utility trenches to prevent migration of methane and/or volatile organic compounds ( VOCs ) into buildings.
3. All building utilities, methane membrane and collection pipes should be connected/adhered to underside of building foundation slab or installed in a manner that prevents damage from potential future ground settlement.
4. Utilities should be designed to accommodate potential future ground settlement in areas outside of building footprint.
5. Perform all required inspections, maintenance, monitoring and reporting in connection with the approved MMS meeting the requirements of Title 27 CCR Sections 20931 and 21190, for structures on landfilled areas, the requirements listed in the PCMMP and other applicable requirements and regulations. Provide copies of all reports to the City.

D. Site Maintenance, Monitoring and Reporting

1. Maintain all hardscapes and softscapes at the Property. Hardscapes are building slabs, slab on grade, roadways, sidewalks and any other hard surfaces over the final landfill cover ( cap ) softscapes are landscaped areas over the cap. Maintain all irrigation systems associated with softscape. Inspect all final cover at the Property, including buildings, hardscape and softscape at the Property monthly during the wet season and quarterly during the dry season. In the event corrective action is warranted, promptly implement any necessary corrective action.
2. Prepare and implement an Operation and Maintenance ( O & M ) Plan for the Property, approved in writing by the San Francisco Regional Water Quality Control Board ( Water Board ) to address routine inspections, maintenance and reporting for the a) landfill cap b) methane and VOC collection, monitoring and alarm systems and c) groundwater, surface water and leachate monitoring systems, as required.
3. Prepare annual maintenance and monitoring reports relating to implementation of the O & M Plan for the Property, methane and VOC monitoring plan, surface water sampling monitoring plan, and elevation monitoring plan, as required. Submit maintenance and monitoring reports to stakeholders.

4. Prepare and implement a methane and volatile organic compound ( VOC ) monitoring plan for the Property, including the installation of any necessary monitoring wells, approved in writing by the Water Board that describes the frequency and procedures for monitoring in structures and perimeter areas of the site and required corrective actions if monitoring results exceed established thresholds. Perform required reporting and provide copies of all reports to the City. Quarterly monitoring is required within subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.
  5. Prepare and implement an elevation monitoring plan for the Property.
  6. Review and properly update all maintenance and monitoring plans and ensure that corrective actions are implemented in a timely manner.
- E. Emergency Response Measures
1. Prepare and implement a post-closure Emergency Response Plan (ERP) for the Property outlining the procedures to be followed in the event of an emergency (such as fires, explosions, earthquakes, floods, vandalism, surface drainage problems, waste releases, etc.). Procedures for dealing with each type of emergency should be included in the ERP. Multiple agencies (fire, police, City, etc.) should be involved with preparation of the plan.
  2. Require annual (at a minimum) updates and training for the ERP.
  3. For planned or emergency subsurface activities, implement the ERP, assess damage and perform corrective action as necessary.
- F. Administrative/ Legal Measures Site Maintenance/Cap/Construction Activities
1. Have entered into a binding voluntary oversight agreement with the Water Board (i) pursuant to which the Water Board will oversee Buyer's compliance with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property, and (ii) confirming that with respect to such requirements, the Buyer is the party primarily responsible for such compliance.
  2. Comply with the requirements of Order No. 00-46, the Closure Plans, and related Applicable Laws, relating to Buyer's acquisition, development, operation and use of the Property.
  3. Execute and implement an O & M Agreement with the City providing the City and/or the Water Board with financial assurance for completion of the Buyer's Post-Closing Mitigation Measures.
  4. Establish and assure an automatic dig alert notification to City Public Works in advance of any soil disturbance at the Property.

5. All construction activities that potentially disturb landfill cap shall be performed only pursuant to a Soil Management Plan (SMP) approved in advance by the Water Board.
6. Record a land use covenant prohibiting construction/subsurface work unless City is notified in advance and the work is performed pursuant to the Water Board-approved SMP.
7. Require hotel personnel to notify City if geotextile marker fabric is encountered or visible.

Exhibit G**SELLER'S POST-CLOSING MITIGATION MEASURES**

Seller shall perform, at Seller's sole expense, each of Seller's Post-Closing Mitigation Measures identified in this Exhibit G. Nothing herein shall reduce or otherwise diminish Seller's other obligations under the Agreement. Capitalized terms not specifically defined herein shall have the meaning prescribed in the Agreement.

**A. Site Security**

1. Provide site security for landfill areas other than the Property ( City andfill Areas ). Security features should be designed to prevent unauthorized access by the general public and may include barriers, and restricted access signage, locks and confined space signage for subsurface vaults and utility trenches and locking well caps for landfill gas and groundwater monitoring wells.

**B. Site Maintenance, Monitoring and Reporting**

1. Cover. Inspect final cover on all areas of the City andfill Areas monthly during the wet season and quarterly during the dry season. In the event corrective action is warranted in the City andfill Areas, promptly implement any necessary corrective action.
2. Groundwater and leachate Monitoring Systems. Inspect and maintain required groundwater and leachate monitoring systems for the City andfill Areas. Perform required monitoring and reporting.
3. Surface Water Monitoring Systems. Sample and monitor required surface water monitoring system, inclusive of stormwater drainage piping and associated catch basins and drainage channels, on the City andfill Areas. Perform required system maintenance and reporting.
4. Surface Water Sampling Monitoring Plan. Prepare and implement a surface water sampling monitoring plan for the City andfill Areas that describes the procedures for monitoring of surface water and the storm drainage system and required corrective actions if monitoring results exceed plan-established thresholds.
5. Elevation. Prepare and implement an elevation monitoring plan for the City andfill Areas.
6. andfill Gas Monitoring Systems. Inspect and maintain required landfill gas monitoring systems for the City andfill Areas. Perform required inspection and reporting. There are no landfill gas monitoring components located on the Property.
7. Methane/ OC Wells. Install methane/ OC monitoring wells outside and separate from buildings on City andfill Areas. Perform required monitoring and reporting.
8. Methane/ OC Monitoring. Monitor for methane/ OCs within subsurface structures on City andfill Areas. Perform required reporting. Quarterly monitoring is required within

subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.

9. O M Plan. Prepare and implement an Operation and Maintenance ( O M ) Plan for the City landfill Properties, approved in writing by the San Francisco Regional Water Quality Control Board ( Water Board ) to address routine inspections, maintenance and reporting for the a) landfill cap b) methane and OC collection, monitoring and alarm systems and c) groundwater, surface water and leachate monitoring systems.
10. O M Reporting. Prepare annual maintenance and monitoring reports relating to implementation of the O M Plan, methane and OC monitoring plan, surface water sampling monitoring plan, and elevation monitoring plan, as required. Submit maintenance and monitoring reports to stakeholders.
11. Methane and OC Monitoring Plan. Prepare and implement a methane and volatile organic compound ( OC ) monitoring plan for the City landfill Areas approved in writing by the Water Board that describes the frequency and procedures for monitoring in structures and perimeter areas of the site and required corrective actions if monitoring results exceed established thresholds. Perform required reporting. Quarterly monitoring is required within subsurface vaults, utilities and any other subsurface structures where gas may potentially build up. At a minimum, a portable landfill gas meter will be used for subsurface structure monitoring.

#### C. Survey Monuments

1. Install and maintain survey monuments on the City landfill Property to monitor landfill settlement. Quarterly inspections are required to ensure monuments are intact and usable, and any repairs or replacement are performed as necessary. Installation of at least two permanent survey monuments are required so that the location and elevation of refuse, final cover, and landfill gas system components can be determined throughout the post-closure period. Additionally, monuments will be surveyed every five years and settlement maps will be produced throughout the post-closure period or until settlement has stopped.

#### D. Emergency Response Measures

1. Prepare and implement a post-closure Emergency Response Plan (ERP) for the City landfill Property outlining the procedures to be followed in the event of an emergency (such as fires, explosions, earthquakes, floods, vandalism, surface drainage problems, waste releases, etc.). Procedures for dealing with each type of emergency should be included in the ERP. Multiple agencies (fire, police, City, etc.) should be involved with preparation of the plan.
2. Require annual (at a minimum) updates and training for the ERP.
3. For planned or emergency subsurface activities, implement the ERP, assess damage and perform corrective action as necessary.

5009197.1



# City of South San Francisco

P.O. Box 711 (City Hall, 400  
Grand Avenue)  
South San Francisco, CA

## Legislation Text

---

**File #:** 22-1071

**Version:** 1

**Agenda Date:** 12/19/2022

**Item #:** 1a.

---

Resolution authorizing the City Manager to execute the First Amendment to the Purchase and Sale Agreement with Ensemble Investments, LLC for the disposition of a city-owned property located at 367 Marina Boulevard (APN 015-011-350) for a hotel development.

WHEREAS, the City is the owner of certain real property (the “Property”) located in the City of South San Francisco, California, known as County Assessor’s Parcel Number (APN) 015-011-350 attached as Exhibit A; and

WHEREAS, on March 23, 2011, the City Council approved the Oyster Point Specific Plan and certified the Phase 1 Project Environmental Impact Report which, among other things, planned for and analyzed the potential environmental impacts of developing a new, full-service hotel with up to 350 rooms on the Property; and

WHEREAS, a Disposition and Development Agreement (“DDA”) was executed on March 23, 2011, between Oyster Point Ventures, LLC, the South San Francisco Redevelopment Agency, and the City of South San Francisco for the master development of Oyster Point, including the potential development of a hotel on the Property; and

WHEREAS, the DDA was assigned to Kilroy Realty (“Kilroy”) in 2018; and

WHEREAS, the DDA requires Kilroy to perform certain site work, grading, and installation of certain infrastructure to prepare for the Property for development, which will be completed, satisfying their obligation, by 2023; and

WHEREAS, in 2017, the City solicited a hotel developer for a proposed development on the Property through an RFQ/RFP process; and

WHEREAS, on December 11, 2017, the City’s Housing Standing Committee recommended that the City Council approve Ensemble Investments, LLC (“Ensemble”) to develop a full-service hotel on the Property and made a recommendation that the City Council authorize the City Manager to enter into an Exclusive Negotiating Rights Agreement (“ENRA”) with Ensemble for the development of the Property; and

WHEREAS, on April 11, 2018, the City Council authorized the City Manager to execute an ENRA with

**File #:** 22-1071  
**Version:** 1

**Agenda Date:** 12/19/2022  
**Item #:** 1a.

Ensemble, and maintained exclusivity until a Purchase and Sale Agreement (“PSA”) was executed; and

WHEREAS, on October 27, 2021 the City Council approved Resolution 188-2021 authorizing the City Manager to execute a PSA with Ensemble for a sale price of \$1,000,000 for the proposed hotel development attached hereto as Exhibit B; and

WHEREAS, on November 17, 2022 the Planning Commission approved the design, Use Permit, draft Development Agreement, and Transportation Demand Management Plan for the project, consisting of the new construction of a 12-story, 165 foot tall, 350 room, 261,000 square foot building, with 232 surface parking space and site improvements, as well as the determination that the project is within the scope of the previously adopted Programmatic EIR under CEQA Guidelines; and

WHEREAS, the current PSA requires the close of escrow to occur on or before December 31, 2022. Per recent amendments to Government Code Section 54220 et seq., the City is required to engage in a statutory noticing and negotiation process for properties that have not been conveyed prior to December 31, 2022.; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of South San Francisco that the City Council hereby:

1. Authorizes the City Manager to execute the First Amendment to the Purchase and Sale Agreement with Ensemble Investments, LLC for the disposition of a City-owned property located at 367 Marina Boulevard (APN 015-011-350) for a hotel development, in substantially the same form as attached hereto as Exhibit C, subject to review by the City Attorney and subject to minor revisions and clarifications of the City Attorney that do not otherwise expand the City’s obligations; and
2. Authorizes the City Manager to take any other related actions consistent with the intention of the resolution.

\* \* \* \* \*



## SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(367 Marina Boulevard /Assessor's Parcel Number: 015-011-350))

This Second Amendment to the Purchase And Sale Agreement And Joint Escrow Instructions (this "Amendment") is made and effective as of December 20, 2023 | 10:43:20 AM PST, 2023 ("Effective Date") by and between the City of South San Francisco, a municipal corporation ("Seller") and Ensemble Investments, LLC, a California limited liability company ("Buyer"). Seller and Buyer are sometimes collectively referred to herein as "the Parties." Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

### RECITALS

A. Seller and Buyer entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated December 10, 2021, ("Agreement") with respect to that certain real property located at 367 Marina Boulevard, South San Francisco, California (Assessor's Parcel Number 015-011-350 [015-010-970 in the Purchase and Sale Agreement, subsequently re-numbered]) ("Property");

B. The Parties entered into the First Amendment to the Agreement on December 20, 2022 to extend the term and to contemplate the Seller's completion of the California Surplus Land Act process;

C. In light of the current economic conditions in the hotel market, the Parties now desire to enter into this Second Amendment to further extend the term of the Agreement and deadline for close of escrow in order to allow a pause in negotiations until January of 2025 to allow financing and market conditions to stabilize, as memorialized below.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and incorporating all of the above as though set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, **the parties hereby agree as follows**, with amendments to the Agreement reflected as additions in double underline and deletions in ~~striketrough~~.

1. **Section 5.1** (as previously amended by the First Amendment) is further amended as follows:

Closing. The escrow for conveyance of the Property shall close ("Close of Escrow" or "Closing") within thirty (30) days after the satisfaction, or waiver

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW  
INSTRUCTIONS (367 MARINA BOULEVARD, SOUTH SAN FRANCISCO,

by the appropriate Party, of all of the Buyer's Closing Conditions (as defined in Section 5.2 below) and all of the Seller's Closing Conditions (as defined in Section 5.3 below), which shall occur no later than July 15, 2025 ~~six (6) months after the Seller concludes the statutory process outlined in Government Code section 54220 et seq. (where such statutory process does not result in a sale of the Property to a third party, (the "Closing Date").~~ Upon Buyer's written request, Seller may grant an extension of the Closing Date by an additional three (3) months.

2. **Master Development Schedule contained in Exhibit C** is Amended as shown in Attachment 1 Exhibit C-Revised attached hereto and incorporated herein.

3. **General Provisions.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Second Amendment and the meaning of the provisions hereof. The provisions of this Second Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Except as expressly amended pursuant to this Second Amendment, the terms and provisions of the Agreement shall remain unmodified and shall continue in full force and effect, and Buyer and Seller hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Second Amendment and the Agreement, this Second Amendment shall govern. The terms and provisions of this Second Amendment, together with the Agreement, shall constitute all of the terms and provisions to which Buyer and Seller have agreed with respect to the transaction governed hereby, and there are no other terms and provisions, oral or written, that apply to the Agreement and/or the Property other than as set forth in the Agreement as modified by this Second Amendment. The provisions of this Second Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns.

4. **Counterparts.** This Second Amendment may be executed in multiple counterparts, all of which shall constitute an original, and all of which together shall constitute a single instrument. Counterparts of this Second Amendment executed and delivered by facsimile, email or other means of electronic delivery shall constitute originals for all purposes.

**SIGNATURES ON FOLLOWING PAGE**

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**IN WITNESS WHEREOF**, the parties have executed this Second Amendment  
as of the Effective Date.

**SELLER:**

**CITY OF SOUTH SAN FRANCISCO**

DocuSigned by:  
By: Sharon Kay Ranals  
Sharon Ranals  
City Manager

**ATTEST:**

DocuSigned by:  
By: Rosa Govea Acosta  
Rosa Govea Acosta  
City Clerk

January 1, 2024 | 1:08:58 PM PST



**APPROVED AS TO FORM:**

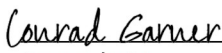
DocuSigned by:  
By: Alexandra Wolf  
Alexandra Wolf  
City Attorney

December 28, 2023 | 10:46:40 PM PST

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW  
INSTRUCTIONS (367 MARINA BOULEVARD, SOUTH SAN FRANCISCO,

**BUYER:**

Ensemble Investments, LLC,  
a California corporation

DocuSigned by:  
By:   
Name: Conrad Garner  
Title: SVP

5549401.1

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW  
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**Attachment 1**

**EXHIBIT C-REVISED**

**Master Development Schedule—Updated December [REDACTED], 2023**

| <b>Activity</b>                                                            | <b>Milestones</b>                                                                                                   |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Submit application for Precise Plan                                        | No later than May 1, 2022                                                                                           |
| Receive Development Agreement Approval (first reading)                     | No later than 2 weeks prior to Closing Date                                                                         |
| Receive Entitlement Approval                                               | No later than 2 weeks prior to Closing Date                                                                         |
| Closing of Escrow                                                          | No later than <u>July 15, 2025 or October 15, 2025 if Seller elects to extend pursuant to Section 5.1</u>           |
| Submit application for Building Permit                                     | No later than 12 months after Closing Date                                                                          |
| Delivery of Proof of an Approved Construction Loan from a Reputable Lender | Within 18 months of submitting for Building Permit.                                                                 |
| Delivery of a Final Construction Contract                                  | Within 18 months of submitting for Building Permit.                                                                 |
| Construction Commences                                                     | Within 19 months of submitting for building permit.                                                                 |
| Substantial Completion of Construction                                     | Within 36 months of construction commencement; targeted for 26-month schedule, but no later than 35-month schedule. |
| Estimated Opening of hotel                                                 | Targeted for 2 months after Substantial Completion of Construction.                                                 |

\*Note that all target dates are subject to automatic extension for delays due to factors beyond Developer's reasonable control in accordance with the force majeure provisions of the Development Agreement.