

**JOINT COMMUNITY FACILITIES AGREEMENT FOR MAINTENANCE AND
OPERATIONS OF MISSION BAY PARKS AND OPEN SPACES
BY AND BETWEEN
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO AND
THE CITY AND COUNTY OF SAN FRANCISCO**

THIS JOINT COMMUNITY FACILITIES AGREEMENT FOR MAINTENANCE AND OPERATIONS OF MISSION BAY PARKS AND OPEN SPACES ("**Agreement**") dated for reference purposes only as of _____, is entered into by the City and County of San Francisco ("**City**"), acting by and through the San Francisco Port Commission ("**Port**") and its Recreation and Park Department ("**RPD**"), and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure or "**OCII**") acting in its capacity as the legislative body of Community Facilities District No. 5 (Mission Bay Maintenance District).

RECITALS

A. The City’s Board of Supervisors approved, by Ordinance No. 327-98 (Oct. 26, 1998) and by Ordinance No. 335-98 (Nov. 2, 1998), the Redevelopment Plan for the Mission Bay North Project and the Redevelopment Plan for the Mission Bay South Project, respectively (collectively, the "**Redevelopment Plans**").

B. The Redevelopment Plans and related plan documents provide for the development of parks and designate the location of parks in areas zoned for open space, among other things. The Redevelopment Plans expire in late 2028.

C. To implement the Redevelopment Plans, the Redevelopment Agency of the City and County of San Francisco ("**Former Agency**") entered into the Mission Bay North Owner Participation Agreement and the Mission Bay South Owner Participation Agreement (collectively, the "**OPAs**") whereby Catellus Development Corporation and its successors (the "**Master Developer**") became obligated to develop public open spaces, parks and plazas on land owned by the City that was designated as Open Space Parcels in the Mission Bay Maintenance District, as shown in Exhibit A (the "**Mission Bay Parks**"). Under the OPAs, the Former Agency and its successors became obligated to reimburse the Master Developer for the costs of developing the Mission Bay Parks and other infrastructure.

D. Once the Master Developer completed any subset of Mission Bay Parks improvements and the City accepted them, the Former Agency managed and maintained them pursuant to that certain Ground Lease dated for reference purposes as of November 16, 2001, as amended (the "**Agency Ground Lease**"). Those Mission Bay Parks that have been completed and accepted and are managed and maintained pursuant to the Agency Ground Lease are identified as NP1, NP2, NP3, NP4, NP5, P1, P5, P6, P10, P11, P11A, P16, P17, P18, P21, P23, P24 and P26, as identified on Exhibit A (the "**Completed Mission Bay Parks**"), and are a subset of the Mission Bay Parks. The Completed Mission Bay Parks will be managed, operated, maintained, repaired, and funded pursuant to this Agreement.

E. The City owns the fee interest in real property for all of the Mission Bay Parks. The Master Developer leases the Mission Bay Parks from the City that have not yet been completed pursuant to that certain Master Lease dated as of June 30, 1999 (the “**Master Developer Ground Lease**”). Those as-yet undeveloped Mission Bay Parks are identified as P2, P7, P8, P9, P12, P13, P15, P19, P22 and P27, as shown on Exhibit B (the “**Future Mission Bay Parks**”), and are a subset of the Mission Bay Parks. Upon completion of any of the Future Mission Bay Parks and once the City’s Board of Supervisors accepts the improvements thereon, the Master Developer Ground Lease as to each such Future Mission Bay Park will be terminated and such Future Mission Bay Parks will be managed, operated, maintained, repaired, and funded pursuant to this Agreement.

F. Certain portions of the Mission Bay Parks are subject to the common law public trust for commerce, navigation and fisheries, and/or the Burton Act statutory trust (Chapter 1333 of Statutes 1968, as amended) as more particularly described in that certain Amended and Restated Agreement Concerning the Public Trust dated for reference purposes as of November 16, 1998. The property subject to the Burton Act statutory trust and the common law public trust obligations applicable to the Mission Bay Parks are depicted on Exhibit C. Those Mission Bay Parks that are subject to the Burton Act statutory trust are referred to herein as the “**Port Lands.**”

G. On December 21, 1999, by Resolution No. 217-99 (“**Resolution of Formation**”), the Former Agency formed the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 5 (“**CFD No. 5**”) under the Mello-Roos Community Facilities Act of 1982, Gov’t Code § 53311 et seq. The purpose of CFD No. 5 is to provide funding for the ongoing operation, maintenance and repair of Mission Bay Parks, as defined in the OPAs and in Exhibit A (Description of Services to be Financed by the District) of the Resolution of Formation. CFD No. 5 funds will remain available to cover park operation, maintenance and repair costs until 2043; provided, however, such funds are not expected to be sufficient to cover all such operation, maintenance and repair costs.

I. Following the 1999 special election of qualified electors in CFD No. 5, the CFD No. 5 levied a special tax to maintain the Mission Bay Parks as described in the Resolution of Formation. Special taxes within CFD No. 5 are levied pursuant to the methodology in the Rate and Method of Apportionment of Special Tax (the “**RMA**”), which was adopted as an exhibit to the Resolution of Formation of CFD No. 5. The Mello-Roos Community Facilities Act, the Resolution of Formation, RMA, and related documents are referred to as the “**CFD Requirements.**”

E. Under Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq., OCII, as successor to the Former Agency, has assumed the rights and obligations under the Redevelopment Plans, Plan Documents (as defined in the Redevelopment Plans) and the Agency Ground Lease, subject to certain state requirements to complete and dispose of redevelopment assets. Cal. Health & Safety Code § 34191.5. Under Ordinance No. 215-12, the City’s Board of Supervisors established the Successor Agency Commission and delegated to it the state authority to implement and complete surviving redevelopment projects.

K. The Redevelopment Dissolution Law requires OCII to dispose of the Former Agency’s real property interests, including the Agency Ground Lease. The Oversight Board of the City and County of San Francisco approved, by Resolution No. 14-2015 (Nov. 23, 2015), a

long range property management plan for OCII that requires OCII to terminate its leasehold interests in the Mission Bay Parks, but that acknowledges OCII's continuing administration of CFD No. 5 maintenance funds, which are authorized under state authority separate from the Redevelopment Dissolution Law. On December 7, 2015, the California Department of Finance approved the Oversight Board's action.

L. RPD manages over 4,000 acres of recreational land, which includes 181 playgrounds and play areas, 82 recreation centers and club houses, 222 neighborhood parks, and serves over 880,000 San Francisco residents. RPD's long-term commitment, values, mission, ties with community partners, and broad reach make it the ideal party to operate the Mission Bay Parks.

M. The Port of San Francisco manages 7.5 miles of waterfront subject to the Public Trust that is home to popular destinations and attractions, historic districts, small businesses and robust maritime opportunities. The Port manages 150 acres of shoreline open spaces and parks that serve all of Californians and visitors from around the world. The Port works to advance environmentally and financially sustainable maritime, recreational, and economic opportunities for the City, Bay Area, and California.

N. San Francisco Public Works ("PW") is not a party to this Agreement, but has existing and continuing jurisdiction over certain Open Space Parcels in the Mission Bay Maintenance District, namely P10, P11, and P11A. This Agreement is intended to provide CFD No. 5 funds for the maintenance and repair of these particular parcels through the administration of RPD, which shall either use the funds directly, or work with the City to allocate funds to PW, to fulfill the CFD Requirements.

O. The parties now wish to enter into this Agreement and to terminate the Agency Ground Lease, identify the City department that will have jurisdiction over each portion of the Mission Bay Parks, describe how funds will be distributed from CFD No. 5 to fulfill the requirements under the Resolution of Formation for operation, maintenance, and repair of Open Space Parcels, and to allow the Port and RPD to operate and maintain the Mission Bay Parks in a coordinated and integrated manner as described in this Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. RECITALS

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

2. TERMINATION OF AGENCY GROUND LEASE; JURISDICTION

(a) Termination of Agency Ground Lease. The City and OCII hereby terminate the Agency Ground Lease effective as of the Effective Date (as defined below in Section 4). OCII will surrender possession of the Premises (as defined in the Agency Ground Lease) to City and the City will accept the surrender of the Premises in accordance with all terms and

conditions of the Agency Ground Lease (including, without limitation, Section 24 thereof). Nothing herein will limit any of OCII's obligations, whether under law, or the Agency Ground Lease that expressly survive the termination of the Agency Ground Lease.

(b) Department Jurisdiction of Mission Bay Parks. The Mission Bay Parks are primarily in the jurisdiction of City's PW. The City anticipates enacting an ordinance pursuant to which the Mission Bay Parks will be transferred to the jurisdiction of Port and RPD (the "**Transfer Ordinance**") consistent with the jurisdiction shown on Exhibit D. Subject to the City's Board of Supervisors approval, upon effectiveness of and consistent with the Transfer Ordinance, the Port will have jurisdiction over those Mission Bay Parks that are within Port Lands. Accordingly, the Port will have jurisdiction over the following Mission Bay Parks: Portions of P1, P2, P8, and P16, and all of P17 through P24, as shown on Exhibit D. Upon effectiveness of and consistent with the Transfer Ordinance, other than P10, P11 and P11A which will remain under PW jurisdiction, RPD will have jurisdiction over the remainder of the Mission Bay Parks, as shown on Exhibit D.

(c) Design, Development, and Jurisdiction of Future Mission Bay Parks. Pursuant to the Plan Documents, design and development of the Future Mission Bay Parks is an obligation of the Master Developer and design review and approval thereof is a responsibility of OCII. The Plan Documents specify that OCII will have primary design review authority, and the Master Developer will be responsible for the construction of the Future Mission Bay Parks. OCII will collaborate with Port and RPD on the public outreach, design and development of the Future Mission Bay Parks. To the extent consistent with the Plan Documents, OCII will share draft designs, conduct a design review process in collaboration with Port and RPD consistent with Port and RPD plan review processes (including, at RPD's election, RPD Commission review of concept plans, and RPD Structural Maintenance Yard review of construction documents), and consider any feedback from Port and RPD regarding any design elements that may impact the operation and maintenance of such facilities; provided, however, that nothing herein shall amend or adversely affect OCII's financial obligations under the Plan Documents. To the extent feasible, any final designs will be consistent with Port and RPD maintenance and design standards. Furthermore, OCII will collaborate with Port and RPD on any public outreach in connection with the design and development of the Future Mission Bay Parks. The parties anticipate that the Future Mission Bay Parks outside of Port Lands will be placed under the jurisdiction of RPD and those located within Port Lands will be placed under the jurisdiction of the Port upon acceptance by the City, unless the Board of Supervisors designates a different department at the time of the City's acceptance.

(d) City's Real Property Records. The Port and RPD will request the City's Director of Property to update the City's Real Property Records upon the effective date of the Transfer Ordinance, and upon any City acceptance of parks, streets or public rights of way in the Future Mission Bay Parks, to reflect the jurisdiction of the Port and RPD (or other City department prescribed in the Transfer Ordinance) as described above.

(e) SFPUC Facilities. All water, wastewater, and stormwater systems, lines and related facilities in Mission Bay that have been accepted by the City on behalf of the San Francisco Public Utilities Commission ("**SFPUC**") will remain under the jurisdiction of the SFPUC. Each City department with jurisdiction over lands in Mission Bay will provide access

as needed to the SFPUC to maintain and repair the SFPUC facilities consistent with other SFPUC facilities in the City. The SFPUC will be responsible for any damage done in connection with its use of the Mission Bay Parks. The parties hereby acknowledge that the Memorandum of Understanding dated June 12, 2019 by and between SFPUC and OCII will automatically terminate upon termination of the Agency Ground Lease by operation of law.

(f) Improvements or Alterations. Any improvements or alterations that are not general maintenance and repairs will be approved and completed by or on behalf of the City department that manages the applicable site, without cost to the other City departments, provided that a City department that is managing property on behalf of another City department will first give notice of the proposed improvements or alterations to the other department, and those parties agree to work together in good faith to implement the proposed improvements and alterations. Improvements within Port Lands must be approved by the Port.

(g) No Limitation of Charter, Departmental, or OCII Authority. Nothing in this Agreement is intended to limit the authority of OCII under the Plan Documents or CFD No. 5 or limit the Charter authority or regulatory authority of any City department as it relates to the Mission Bay Parks, including the authority of the City's Police, Fire, San Francisco Municipal Transportation Authority, SFPUC, Arts, Planning, Department of Building Inspection, and PW departments.

3. PARK CODES, PUBLIC TRUST, AND RESTRICTIONS

(a) Port Code, Park Code, and BCDC. The parties agree that the Mission Bay Parks are and will generally remain open to members of the general public for use and enjoyment, consistent with other parks in the City, and subject to the Redevelopment Plans and related plan documents, applicable Municipal Codes including the City's Port Code and City's Park Code (the "**Park Codes**") and other applicable laws, as amended from time to time. The Mission Bay Parks will also be used and maintained in accordance with applicable recorded restrictions and certain regulatory requirements imposed by the Bay Conservation and Development Commission ("**BCDC**") under Permit #2000.005.08 (last amended in August 2022), as amended.

(b) Public Trust Requirements. The Mission Bay Parks are subject to the requirements of the Mission Bay Exchange Act (Stats 1991 ch 1143; Stats 1997 ch 203). The Mission Bay Parks within Port Lands are subject to the requirements of the Burton Act (Chapter 1333, Statutes of 1968), and all of the Mission Bay Parks are subject to the requirements of the California Public Resources Code section 6303, et seq., each as amended from time to time (together, the "**Public Trust Requirements**"). RPD and the Port agree to comply with the Public Trust Requirements in using the funds available under this Agreement. The City department responsible for managing the various Mission Bay Parks will be responsible for complying with these substantive and procedural requirements, including any reporting requirements to the California State Lands Commission. The Port and RPD will cooperate and work together on fulfilling any reporting requirements relating to the Mission Bay Parks. While the City departments anticipate that the cost of operating and maintaining the Mission Bay Parks will significantly exceed any revenues received from the Mission Bay Parks, the Port and RPD agree to maintain accounting of such revenues and expenditures, and to comply with the following:

- All revenues received from trust lands and trust assets administered or collected by a trustee of granted public trust lands will be expended only for those uses and purposes consistent with the public trust.
- All funds received or generated from trust lands or trust assets will be segregated in separate accounts from non-trust received or generated funds.
- To the extent required by an applicable statutory grant, on or before December 31 of each year, each department managing the Mission Bay Parks will file with the State Lands Commission a detailed statement of all revenues and expenditures relating to its managed trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement.
- The statement will be prepared in accordance with generally accepted accounting principles, and will conform to any standardized reporting form developed by the State Lands Commission.

4. EFFECTIVE DATE; TERM

(a) Effective Date. The "**Effective Date**" of this Agreement is when fully executed and approved by the Successor Agency Commission, the Port Commission, the RPD Commission, and City's Board of Supervisors.

(b) Term; Department Right to Terminate. The term of this Agreement begins on the Effective Date and continues until the expiration of CFD No. 5, unless earlier terminated under this Agreement, but in no event later than November 1, 2089. In addition, the Port, RPD, or OCII may initiate a proposed termination of this Agreement by providing notice to the other parties by December 31 of any given year, which termination will be effective on the June 30th that is no earlier than 18 months after such notice. Upon receipt of such notice, the parties agree to meet and confer for not less than 120 days to see if they can agree upon any amendments to this Agreement or if they agree upon the terms and conditions of any termination of this Agreement. Any termination must be in writing, and will be subject to the prior approval of the Port Commission, the RPD Commission, and Successor Agency Commission, each in their sole discretion; provided, if one Commission approves a termination and the other Commission does not, the City department seeking termination may effectuate a termination upon the prior approval of the Board of Supervisors by resolution, and subject to such terms and conditions as may be determined by the Board as a policy matter. Upon any termination of this Agreement, the City department with jurisdiction of any portion of the Mission Bay Parks will be responsible for funding and performing all maintenance and operations relating to that property.

5. MANAGEMENT OF MISSION BAY PARKS; CFD FUNDING

(a) Management Responsibility of RPD and Port. RPD will operate, manage, and maintain all of the completed and accepted Mission Bay Parks within RPD jurisdiction and any Future Mission Bay Parks placed within RPD jurisdiction, as well as the following Mission Bay Parks within the Port Lands: P1, P2, P8, P16 and P17 (collectively, the "**RPD Managed Parks**"). The Port will operate, manage, and maintain the remainder of the

completed and accepted Mission Bay Parks within the Port Lands and any Future Mission Bay Parks placed within Port jurisdiction (the “**Port Managed Parks**”).

(b) Operations Plan. A primary objective of this Agreement is to ensure the smooth and integrated operation and maintenance of the Mission Bay Parks notwithstanding the separation of jurisdiction and maintenance responsibilities between the Port and RPD. Following the Effective Date, the Port and RPD staff will create an operations and program plan for all of the Mission Bay Parks (the “**Operations Plan**”), subject to review and approval by OCII acting as CFD No. 5, and to meet annually (in January), or such other period as requested by either department or OCII, to review and update the Operations Plan as needed. The Operations Plan may include rules and regulations governing the public’s use of the Mission Bay Parks, or the City departments may instead rely on the rules and regulations in the Park Codes, subject to consistency with the Redevelopment Plans and Plan Documents until their expiration. Subject to the approval of OCII (which approval shall only be required for amendments to program plans but not specific events), the Port and RPD may agree to amend the Operations Plan at any time.

(c) CFD No. 5 Funding. The qualified electors of CFD No. 5 voted to create a community facilities district and authorized a special tax assessment that OCII administers to fund the maintenance of the Mission Bay Parks. In addition, OCII may receive funding directly from developers and other parties to supplement the CFD No. 5 Funding and this supplemental funding will be considered CFD No. 5 Funds for purposes of this Agreement and will be allocated to the Port and RPD consistent with OCII’s obligations under applicable provisions of the Mission Bay South Owner Participation Agreement, the CFD Requirements, and this Agreement. OCII, acting as the legislative body of CFD No. 5, has the obligation to cause the Mission Bay Parks to be operated, maintained and repaired in good order, condition and repair. For so long as CFD No. 5 exists, OCII, acting as the legislative body of CFD No. 5, will approve, in its sole discretion, an annual budget for CFD No. 5 Funds consistent with CFD Requirements detailing the maximum amount of funding available for the maintenance and operations of the Mission Bay Parks after deducting its reasonable administrative costs. OCII will review and approve the Operations Plan for the Mission Bay Parks, and will transfer to the City, subject to appropriation in the CFD annual budget, the CFD No. 5 funds available to implement the Operations Plan, after deducting its reasonable administrative costs. The parties agree to work together in good faith to maximize available funding from the CFD No. 5. Nothing in this Agreement may be construed as requiring or authorizing OCII to use property tax revenues (formerly tax increment) to fund the maintenance of the Mission Bay Parks.

(d) Security and Utilities. The City department responsible for maintenance will also be responsible for appropriate security services and code enforcement, and the procurement of and payment for any required utilities, for the property under its management.

(e) Transfer of Management Responsibilities. RPD and the Port may transfer management, operation, and maintenance responsibilities between them from time to time, with the consent of OCII acting as the CFD No. 5, the General Manager of RPD, and the Executive Director of the Port. Any such transfer must be in writing, and RPD and the Port will work with the Controller, the Mayor’s Budget Director, and OCII to ensure that the CFD No. 5 funding is divided equitably each fiscal year.

(f) Coordination of Operation and Management. RPD and the Port, in consultation with OCII acting as CFD No. 5, will meet and confer from time to time at the request of either department, to coordinate efforts, ensure consistency, and address any operational, programming, maintenance or repair issues. Each department will designate a contact person for such matters. The initial contact persons are: for RPD, Director of Operations, for Port, Deputy Director of Real Estate, and for OCII, Deputy Director of Projects and Programs.

(g) Funding and Budget. RPD and the Port will each maintain the Mission Bay Parks that it assumes responsibility for under this Agreement consistent with the Redevelopment Plan and Plan Documents until they expire, CFD Requirements, the Operations Plan, and with the other parks and open spaces that it maintains in the City, subject to available funding. Nothing in this Agreement requires OCII or the City departments to spend funds that have not been appropriated for the Mission Bay Parks in their annual budgets. Both RPD and the Port shall seek budget authorizations and funding to maintain the Mission Bay Parks consistent with the standards for maintenance set forth in this Agreement and as may be agreed to by the departments from time to time; however any final budget decisions of the City regarding non-CFD No. 5 Funds are subject to the approval of the Mayor and the Board of Supervisors, each in their sole discretion.

RPD and the Port will work together to create annual budgets and to agree upon an equitable method of dividing the CFD No. 5 funds for the Mission Bay Parks between them each year, in consultation with the Controller and approval by OCII. Criteria that may provide the basis of such allocation may include acreage maintained, personnel hours using an agreed upon formula, historical utility usage, or other relevant criteria. Subject to Section 5(c) above, OCII may consider non-CFD revenue generated by the Mission Bay Parks in its approval of an equitable distribution of CFD No. 5 funding. OCII may not approve or direct the use of any non CFD No. 5 funding within Mission Bay. Budgets must have sufficient detail including staffing, contracts, utilities, material, supplies and equipment. If, notwithstanding their good faith efforts, RPD and the Port cannot agree upon an allocation of the CFD No. 5 funds in any given year, RPD and Port will split the annual CFD No. 5 funds based on the following formula and submit the resulting annual budget to OCII for approval: (1) the total acreage maintained by each respective department for the applicable year, and (2) the average of the previous two (2) fiscal years' budget per acre funding, excluding any one-time costs. Any park maintained for less than a full fiscal year will be accounted for on a prorated basis.

(h) Billing Procedures. RPD and the Port will submit invoices to OCII on a quarterly basis within ninety days after the end of each quarter, not to exceed the amount in the annual CFD budget. The invoices will include an actual to budget accounting of expenses, describe the services provided, and include sufficient information to determine the methodology used to determine the costs. OCII staff will review and approve these invoices for payment. Reimbursement will occur no later than forty-five days after a completed reimbursement request is submitted by RPD or the Port.

(i) Reserved.

(j) Median Strip and Traffic Circle in P10 and P11/11A. P10, P11 and P11A are not being accepted by RPD, and will remain public rights of way under the jurisdiction of PW.

To the extent RPD receives CFD funds for these parcels, RPD shall either use these funds to maintain the parcels on behalf of PW; or shall provide the funds to PW to have PW maintain such parcels in accordance with the Redevelopment Plans and related plan documents until they expire, CFD Requirements, and PW standards for other areas of the City, subject to available funding. Alternatively, at RPD's written request OCII may provide the CFD funds to PW directly, for these purposes. The RPD General Manager shall ensure that PW agrees in writing to abide by the terms of this MOU, as a condition of PW receiving CFD funds under this subsection (j). Alternatively, at RPD's written request OCII may provide the CFD funds to PW directly, for these purposes. The RPD General Manager shall ensure that PW agrees in writing to abide by the terms of this MOU, as a condition of PW receiving CFD funds under this subsection (j).

6. CONTROLLER CERTIFICATION OF FUNDS

Nothing in this Agreement requires a City department or OCII to incur costs or expend funds that are not included in its annual budget, as approved by the City's Board of Supervisors and Mayor or, in the case of OCII, the annual CFD No. 5 budget approved by the Successor Agency Commission. This Agreement is subject to the budgetary and fiscal provisions of City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there will be no obligation for the payment or expenditure of money by City unless the Controller first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

7. SIGNAGE

The Port and RPD will create and implement a signage plan, so that the Mission Bay Parks all share consistent regulation signs and establish policies regarding signs that are permitted and prohibited, and that are consistent with Mission Bay North and South Signage Plans until expiration of the Redevelopment Plans. The signage plan will be subject to the approval of the Port Executive Director and the RPD General Manager and OCII so long as the Redevelopment Plans are in effect. The City's PW and San Francisco Municipal Transportation Agency will control signage in and for the streets and public rights of way.

8. PERMITTED USES; CONTRACTING

(a) Permitted Uses. The Mission Bay Parks will be used for parks and open spaces, consistent with the public trust, and Redevelopment Plans and related plan documents, as further described in the Operations Plan (the "**Permitted Uses**"). The City departments will use best efforts to ensure that all of the Mission Bay Parks are used for the Permitted Uses at all times. Any change to the Permitted Uses must be approved by both the Port, RPD, and OCII.

(b) Entry. Each City department may enter the Mission Bay Parks at any reasonable time and, except in the event of an emergency, with reasonable advance notice to the managing department, for inspection, inventory or maintenance and repairs, and when otherwise reasonably necessary for the protection of its interests. Such entry will be conducted in a manner that reasonably limits any impact on the Permitted Uses.

(c) Merchandise, Sales and Concessions. Subject to any limitations or requirements set forth in the Operations Plan, the Parks Code and the Mission Bay Parks specific regulations, RPD and the Port may (1) sell branded and other program-related merchandise at the Mission Bay Parks to promote its own organization and fundraising for the Mission Bay Parks, (2) allow sales and concessions, and (3) host special events.

(d) Contracts. Each City department will be responsible for entering into contracts, leases and permits on the portion of the Mission Bay Parks that it maintains under this Agreement, in accordance with its standard contracting processes and applicable law.

9. RESTRICTIONS ON USE; COMPLIANCE WITH LAW

(a) Compliance with Agreements and Law. RPD and Port will not use or permit the Mission Bay Parks under each of their management to be used in a manner that violates this Agreement, the Redevelopment Plans and related plan documents, or applicable law, or that would materially interfere with the primary purposes of public access to the Mission Bay Parks. Each City department acting as a trustee of the public trust for the Mission Bay Parks will have the right to prohibit any use that is inconsistent with the public trust, as provided in Section 3(b) of this Agreement, or the requirements of any regulatory permit or approval.

(b) RPD Activities within Port Lands. In performing maintenance, repair or replacement activities on the RPD Managed Parks within Port Lands, RPD agrees not to make any material improvements or alterations without the prior written consent of Port (which consent shall not be unreasonably withheld) and will obtain any necessary Port regulatory permits; provided, however, that repairs or replacements with similar materials or improvements that do not change the functionality or dimensions of the improvements will not require Port consent.

(c) Prohibited Activities. Except as otherwise described in the Operations Plan, the Port and RPD will not, without the prior consent of OCII and the other City department: (i) allow overnight stays at the Mission Bay Parks; (ii) conduct or allow activities that would prevent or materially impede public access to the Mission Bay Parks; or (iii) allow any activity that requires an After Hours Permit from the San Francisco Police Department.

(d) Hazardous Materials; Indemnity. Each party will comply with, and will ensure that its contractors comply with, the requirements of that certain Risk Management Plan approved by the Regional Water Quality Control Board for the San Francisco Bay Region in May 1999, covering among other properties, the Mission Bay Parks (the “**RMP**”) as it relates to any of their activities which may disturb the soil or groundwater under the Mission Bay Parks. The Port and RPD will promptly notify the other and OCII if there is a release of any Hazardous Substance, as defined below, in or around the Mission Bay Parks. The Port and RPD will cooperate in any action against the party responsible for the release. The City shall Indemnify (as defined in Section 10) OCII and its Agents from any Claims (as defined in Section 10) resulting from any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Substance, into the environment (“**Release**”) or threatened Release of a Hazardous Substance to the extent that such Release or threatened Release is directly created or aggravated by the specific activities undertaken by the City pursuant to this Agreement or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Agreement to be performed or

observed by the City; provided, however, that (without limiting City's obligations and liabilities under the Agency Ground Lease) the City shall have no liability, nor any obligation to Indemnify any person for any such Claim resulting from (x) the discovery or disclosure or any pre-existing condition, (y) the movement of soil or groundwater or other activity undertaken by City, which concerns Hazardous Substances existing prior to the termination of the Agency Ground Lease, or (z) the negligence or willful or other actionable misconduct of OCII or its agents, employees, officers, contractors, or invitees. "**Hazardous Substance**" shall have the meaning defined in the OPAs. OCII's obligation to indemnify City and its Agents as it relates to Hazardous Materials contained in the Agency Ground Lease shall survive the termination of the Agency Ground Lease for all Claims arising from or connected with circumstances, actions or omissions that occurred prior to the date of termination of the Agency Ground Lease.

10. INDEMNITIES

(a) City's Indemnity. City will indemnify, defend, and hold harmless from ("**Indemnify**"), and, if requested, shall defend OCII and its Agents from and against any and all claims, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of any of the following occurring from and after the Effective Date: (a) any injury to or death of any person including City employees, or damage to or destruction of any property occurring in, on or about Mission Bay Parks, or any part thereof, from any cause whatsoever, (b) City's use of the Mission Bay Parks that City manages pursuant to this Agreement, or (c) any acts or omissions of City or its Agents in, on, or about the Mission Bay Parks that City manages pursuant to this Agreement; provided, however, that this indemnity shall exclude claims, liability, damage or loss resulting from the negligence or willful misconduct of OCII or its Agents, except but only to the extent contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, City, its Agents or Invitees.

In addition to City's obligation to indemnify OCII, City specifically acknowledges and agrees that it has an immediate and independent obligation to defend OCII from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. The City's obligation to defend shall arise at the time such claim is tendered to City by OCII and shall continue at all times thereafter. The foregoing indemnity obligation of the City shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by City shall begin from the first notice that any claim or demand is or may be made.

The term "**Agents**" when used with respect to either party includes the agents, employees, officers, and contractors of the party. In any action or proceeding brought against OCII or its Agents because of a Claim Indemnified by City under this Section, at its sole option, City may elect to defend the Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that OCII will have the right, but not the obligation, to participate in the defense of the Claim at its sole cost. City's obligations under this Section will survive the termination of this Agreement.

(b) OCII's Indemnity under Agency Ground Lease. OCII's obligation to Indemnify City and its Agents contained in the Agency Ground Lease shall survive the termination of the Agency Ground Lease for all Claims arising from or connected with circumstances, actions or omissions that occurred prior to the date of termination of the Agency Ground Lease and that are covered under the Agency Ground Lease.

(c) OCII Representations. OCII represents and warrants to City that (i) OCII has not heretofore assigned, sublet, conveyed or transferred, without City consent, all or any portion of its interest in the Agency Ground Lease or the Mission Bay Parks; (ii) no other person, firm or entity (other than City) has any right, title or interest in the Agency Ground Lease or the Mission Bay Parks; and (iii) OCII has no knowledge of any existing or threatened Claim arising from or in any manner connected with the Agency Ground Lease or the Mission Bay Parks by any other party.

(d) City Department Responsibility. In the event of a Claim that City Indemnifies OCII for pursuant to Section 10(a), the Port and RPD will cooperate in defending such action. If the Claim is caused by the negligence of a particular City department, then that City department will be responsible for any City liability. If the injury is not caused by the negligence of a City department, then the City department with management responsibilities for the Mission Bay Park where the Claim arose will have responsibility for any resulting City liability.

11. DISPUTE RESOLUTION

If a dispute between or among OCII, RPD, and the Port arises under this Agreement, the contact person for affected agency shall in good faith meet with the others to resolve the dispute. If the contact persons are not able to resolve the dispute, resolution of the matter will be referred to the head of each affected agency. If the agency heads are unable to resolve the dispute, the matter will be referred to the Mayor's Office for resolution by the Mayor or his or her designee.

12. NOTICE

Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following addresses, or at such other addresses as the agencies listed below may designate by notice as their new address:

Address for Port: Deputy Director, Real Estate and Development
Port of San Francisco
Pier One
San Francisco, CA 94111

Telephone No: (415) 274-0400

Address for RPD: Chief Financial Officer
San Francisco Recreation

and Park Department
McLaren Lodge
San Francisco, CA 94117

Telephone No: (415) 831-2700

Address for OCII: Executive Director
1 South Van Ness, 5th Floor
San Francisco, CA 94103

Telephone No: (415) 749-2400

Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is mailed, if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, no party may give official or binding notice by email, telephone or facsimile.

13. MINERAL RESERVATION

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Mission Bay Parks within Port Lands.

14. ENTIRE AGREEMENT

This Agreement (including attached exhibits) contains the entire understanding between the parties with respect to the subject matter hereof.

15. EXCLUSIVE BENEFIT OF PARTIES

The provisions of this Agreement are for the exclusive benefit of the City departments and OCII, and not for the benefit of, nor give rise to any claim or cause of action by, any other person. This Agreement shall not be deemed to have conferred any rights upon any person except the signatories to this Agreement.

16. APPROVALS

All approvals under this Agreement and any agreements contemplated hereby may be given by the OCII Executive Director, RPD General Manager, the Port Executive Director, and the PW Director, or their respective designees, except as otherwise specified herein or in the City Charter or the City's Municipal Code.

17. AMENDMENTS

This Agreement may be amended only by a signed writing of OCII, RPD, and the Port. Any amendment of this Agreement between OCII and the City must be approved by City's Board of Supervisors, OCII's commission, and any City department's commission, as applicable.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date written below.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the SAN FRANCISCO RECREATION AND PARK DEPARTMENT

By: _____
ELAINE FORBES
Executive Director
Port of San Francisco

By: _____
PHIL GINSBURG
General Manager
San Francisco Recreation and
Park Department

Date Signed: _____
San Francisco Port Commission
Resolution No. _____

Date Signed: _____
San Francisco Recreation and Park Department
Resolution No. _____

Approved by San Francisco Board of Supervisors
Resolution No. _____

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, commonly known as the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, a public body organized and existing under the laws of the State of California and acting under its authority as Community Facilities District No. 5

By: _____
Thor Kaslofsky
Executive Director
San Francisco Office of
Community Investment and
Infrastructure

Date Signed: _____
[Commission on Community Infrastructure and
Investment Resolution No. _____]

REVIEWED:
DAVID CHIU, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

Approved as to form for the Office of Community Investment and Infrastructure:

By: _____
James B. Morales
OCII General Counsel

EXHIBIT A
MAP OF MISSION BAY PARKS

EXHIBIT B

MAP OF FUTURE MISSION BAY PARKS

Mission Bay Parks P2, P7, P8, P9, P12, P13, P15, P19, P22 and P27

EXHIBIT C

Map of Mission Bay Parks Subject to the Burton Act and Common Law Public Trust

EXHIBIT D

Jurisdiction of Mission Bay Parks following the Transfer Ordinance

