

JOINT COMMUNITY FACILITIES AGREEMENT FOR MAINTENANCE AND OPERATIONS OF HUNTERS POINT SHIPYARD PHASE ONE 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 HUNTERS POINT SHIPYARD PHASE ONE PARKS AND OPEN SPACES (“**Agreement**”) dated for reference purposes only as of [DATE], is entered into by the City and County of San Francisco (“the **City**”), acting by and through its San Francisco Arts Commission (“**SFAC**”) and its Recreation and Park Department (“**RPD**”); 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**”) in its ordinary capacity and its capacity as Community Facilities District No. 8 (“**CFD No. 8**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

- A. The City’s Board of Supervisors approved, by Ordinance No. 285-97 (July 14, 1997), the Redevelopment Plan for the Hunters Point Shipyard Phase One (“the **Redevelopment Plan**”).
- B. The Redevelopment Plan and Plan Documents (as defined in the Redevelopment Plan) provide for the development of parks and designate the location of parks in areas zoned for open space, among other things.
- C. To implement the Redevelopment Plan, the Redevelopment Agency of the City and County of San Francisco (“the **Former Agency**”), OCII’s predecessor in interest, and Lennar/BVHP LLC entered the Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of December 2, 2003 and recorded in the Official Records of the City and County of San Francisco (“the **Official Records**”) on April 5, 2005 as Document No. 2005-H932190, as amended by that certain First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of April 4, 2005 and recorded in the Official Records on April 5, 2005 as Document No. 2005-H932191 (the “**First Amendment**”), and as further amended by that certain Second Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of October 17, 2006 and recorded in the Official Records on October 26, 2006 as Document No. 2006-I275571 (the “**Second Amendment**”), and as further amended by that certain Amendment to Attachment 10 (Schedule Of Performance For Infrastructure Development And Open Space “Build Out” Schedule Of Performance) to the Disposition And Development Agreement Hunters Point Shipyard Phase 1, dated as of August 5, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-I738449 (the “**Third Amendment**”), and as further amended by that certain Fourth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1), dated as of August 29, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-I738450 (the “**Fourth Amendment**”), and as further amended by that certain Fifth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1), dated as of November 3, 2009 and recorded in the Official Records on November 30, 2009 as Document No. 2009-I879123 (the “**Fifth Amendment**”), and as further amended by that certain Sixth Amendment to Disposition and Development

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Agreement (Hunters Point Shipyard Phase 1), dated as of December 19, 2012 and recorded in the Official Records on February 11, 2013 as Document No. 2013-J601488 (the “**Sixth Amendment**”), and as further amended by that certain Seventh Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1), dated as of August 10, 2018 and recorded in the Official Records on August 13, 2018 as Document No. 2018-K654874 (together with the Original DDA, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, the “**DDA**”).

D. Under the DDA, Lennar/BVHP LLC and its successors (the “**Master Developer**”) became obligated to develop public open spaces, parks, plazas and public art on land owned by the Former Agency (and now OCII) that was designated as Open Space Parcels in the HPSY1 Maintenance District, as shown in Exhibit A (the “**HPSY1 Parks**”). Under the DDA, the Master Developer is obligated to construct the HPSY1 Parks and other infrastructure and OCII is obligated to reimburse the Master Developer for its costs with bond proceeds and special assessments authorized under the Mello-Roos Community Facilities Act of 1982, Gov’t Code § 53311 *et seq.* (“**the Mellow Roos Act**”).

E. Pursuant to the Plan Documents and the DDA, the design and development of HPSY1 Parks are obligations of the Master Developer, and the design review and approval thereof are responsibilities of OCII. The Plan Documents specify that OCII has primary design review authority, and the Master Developer is responsible for the construction of the HPSY1 Parks.

F. OCII owns the fee interest in the real property for all the HPSY1 Parks and leases the land to the Master Developer pursuant to the “**Interim Lease.**” Under the Interim Lease, the Master Developer is responsible for maintaining and managing all improvements until it completes the improvement process for a given park area. Once OCII determines, with input from the City’s Public Works Department, that the Master Developer has completed any subset of HPSY1 Parks improvements, OCII issues a Certificate of Completion pursuant to the DDA, then accepts, manages, and maintains the subject improvements.

G. On June 17, 2025, OCII and RPD entered a Memorandum of Agreement (the “**MOA**”) providing, among other things, that RPD will operate and maintain HPSY1 Parks that have received Certificate of Completion, but have not yet been conveyed to and accepted by the City. Upon final approval of this Agreement, the MOA will terminate and this Agreement will provide the City with funding for maintenance of the HPSY1 Parks.

H. The City and OCII will execute a Conveyance and Trusteeship Agreement for Maintenance and Operations of Hunters Point Shipyard Phase 1 Parks and Open Spaces (the “**Conveyance Agreement**”). Pursuant to the Conveyance Agreement, OCII will immediately convey to the City, and the City will accept, all HPSY1 Parks that have already received Certificates of Completion. Also pursuant to the Conveyance Agreement, OCII will subsequently convey to the City each additional HPSY1 Park as it receives a Certificate of Completion.

I. This Agreement will govern the management, operations, maintenance, repair and funding for the HPSY1 Parks, including those HPSY1 Parks for which OCII has issued a Certificate of Completion but remain in OCII ownership (the “**OCII HPSY1 Parks**”), which will be operated and maintained by RPD, and those that OCII has conveyed to the City pursuant to the Conveyance Agreement (the “**City HPSY1 Parks**”). The term “**Completed HPSY1 Parks**”

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includes all HPSY1 Parks that have received a Certificate of Completion, encompassing both the OCII HPSY1 Parks and the City HPSY1 Parks.

J. A subset of the HPSY1 Parks identified on Exhibit A as **the HPSY1 Trust Parks**, are subject to the common law public trust for commerce, navigation and fisheries (“**the Public Trust**”) imposed through transactions pursuant to the Hunters Point Shipyard/Candlestick Point Title Settlement, Public Trust and Boundary Line Agreement (“**the Trust Agreement**”), authorized by Chapter 203 of the Statutes of 2009, as amended by Chapter 429 of the Statutes of 2011 (“**SB 792**”), by and between the Former Agency, the City, the Port Commission, the California State Lands Commission, and the California Department of Parks and Recreation. Pursuant to the Trust Agreement and SB 792, the Former Agency was designated the trustee for the Public Trust. An HPSY1 Trust Park that has received a Certificate of Completion is a “**Completed HPSY1 Trust Park.**”

K. The DDA obligated the Former Agency to form a community facilities district to fund the long-term maintenance costs of the HPSY1 Parks. On September 2, 2008, by Resolution No. 94-2008 (“**Resolution of Formation**”), the Former Agency formed the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 8 (“**CFD No. 8**”) under the Mello-Roos Community Facilities Act of 1982, Gov’t Code § 53311 *et seq.* The purpose of CFD No. 8 is to provide funding for the ongoing operation, maintenance and repair of HPSY1 Parks, as defined in the DDA and in Exhibit A (Description of Services to be Financed by the District) of the Resolution of Formation. Following a special election of qualified electors in CFD No. 8, CFD No. 8 levied a special tax to maintain the HPSY1 Parks as described in the Resolution of Formation. Special taxes within CFD No. 8 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. 8. The Mello-Roos Community Facilities Act, the Resolution of Formation, RMA, and related documents are referred to as the “**CFD Requirements.**”

L. CFD No. 8 funds will remain available to cover park operation, maintenance and repair costs, as well as public artwork maintenance, conservation and reports costs, in perpetuity; provided, however, such funds are available only to the extent consistent with the CFD Requirements; and provided further that the CFD No.8 funding is not expected to be sufficient in the future to cover all such operation, maintenance and repair costs.

M. OCII, as the CFD No. 8 administrator, has the obligation to cause the HPSY1 Parks, including the public artworks therein, to be operated, maintained and repaired in good order, condition and repair. OCII may receive additional funding directly from developers and other parties (“**Other OCII Funds**”) to supplement the CFD No. 8 funding.

N. On February 1, 2012, the State of California dissolved the Former Agency. Under Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 *et seq.*, OCII, as successor to the Former Agency, has assumed the Former Agency’s rights and obligations under the Redevelopment Plans, Plan Documents, the Trust Agreement and SB 792, subject to certain state requirements to complete enforceable obligations 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. The California Department of Finance (“**DOF**”) finally and conclusively determined that the DDA was an

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enforceable obligation of OCII. In general, OCII's implementation of CFD Requirements is not subject to DOF review so long as OCII is acting under the CFD Requirements and is only using CFD funds.

O. RPD manages over 4,000 acres of recreational land, which includes 181 playgrounds and play areas, 82 recreation centers and club houses, 230 neighborhood parks, and serves over 840,000 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 HPSY1 Parks.

P. SFAC, established by City Charter in 1932, is responsible for San Francisco's Civic Art Collection, which includes over 4,000 artworks. As the agency with jurisdiction over all art belonging to the City and charged with the preservation and care of artwork in the Civic Art Collection, SFAC is the appropriate party to assume responsibility for the eight public artworks in the HPSY 1 Parks that are identified on Exhibit B and are to be accessioned into the Civic Art Collection (the "**SFAC Public Artworks**"). For purposes of this Agreement, references to the HPSY1 Parks or an individual HPSY1 Park, or any variant thereof, includes any SFAC Public Artworks therein, unless the context requires otherwise.

Q. The parties now wish to enter into this Agreement to describe how funds will be distributed from CFD No. 8 to fulfill the requirements under the CFD Requirements for operation, maintenance, and repair of Open Space Parcels, as defined therein, and to allow RPD to operate and maintain the HPSY1 Parks and SFAC to maintain and conserve SFAC Public Artworks therein 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. HPSY1 PARKS COVERED BY THIS AGREEMENT

2.1 Scope of Management Responsibility.

- a. Pursuant to the Conveyance Agreement, OCII will immediately upon that Agreement's Effective Date convey to the City all OCII HPSY1 Parks that have already received a Certificate of Completion.
- b. Each HPSY1 Park that has received or in the future receives a Certificate of Completion and becomes, prior to acceptance by the City, an OCII HPSY1 Park as defined above, will be subject to this Agreement without further action by the Parties.
- c. As each OCII HPSY1 Parks is conveyed into City ownership pursuant to the Conveyance Agreement, it will become a City HPSY1 Park and will remain subject to the provisions of this Agreement with no break or alteration in RPD or SFAC's obligations hereunder.

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3. EFFECTIVE DATE; TERM

3.1 Effective Date. The “**Effective Date**” of this Agreement is the date when it is fully executed and approved by the Successor Agency Commission, San Francisco Arts Commission, the RPD Commission, and City’s Board of Supervisors.

3.2 Term. The term of this Agreement begins on the Effective Date and continues until the date sixty-six (66) years from the Effective Date, unless earlier terminated under this Agreement.

3.3 Early Termination. SFAC, RPD, or, prior to conveyance of the final Completed HPSY1 Park, 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 Arts Commission, the RPD Commission, and the Successor Agency Commission, each in their sole discretion; provided, if at least one Commission approves a termination and at least one of the other Commissions does not, the party 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. Termination of this Agreement shall not imply or effect the termination of the Conveyance Agreement. Upon any termination of this Agreement, RPD will be responsible for funding and performing all maintenance and operations relating to the City HPSY1 Parks.

4. CITY RESPONSIBILITIES; CFD FUNDING

4.1 Management Responsibility of RPD and SFAC. RPD will maintain and operate the Completed HPSY1 Parks and, within the Completed HPSY1 Parks, the Nautical Swing and Gigantry public art pieces. SFAC will conserve and maintain the SFAC Public Artworks as identified in Exhibit B within the Completed HPSY1 Parks. RPD and SFAC’s maintenance, management, conservation, and operation of the parks and artworks shall be consistent with the standards of operations and maintenance for other parks and artworks throughout the City, this Agreement, the Redevelopment Plan and Plan Documents until they expire, the CFD Requirements, and the Operations Plan, subject to available funding from CFD No. 8, the Other OCII Funds, and City sources.

4.2 Management Services; Operations Plan. RPD shall provide comprehensive park and facility management services, including landscape, janitorial, general maintenance, and City park code enforcement, to manage the Completed HPSY1 Parks for public use and enjoyment, as generally described herein and, consistent with the CFD Requirements, including its Description of Services to be Financed by the CFD in Exhibit A. To the extent allowed under the Park Codes, the Operations Plan may include rules and regulations governing the public’s use of the HPSY1 Parks, or RPD may instead rely on the rules and regulations in the City’s Park Codes, subject to consistency

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with the CFD Requirements, Redevelopment Plan and Plan Documents until their expiration.

- a. RPD staff shall create an operations and program plan for all of the HPSY1 Parks (the “**Operations Plan**”), subject to review and approval by OCII acting as CFD No. 8.
- b. RPD and OCII staff will meet annually (in January), or such other period as requested by either RPD or OCII, to review and update the Operations Plan as needed.
- c. For so long as CFD No. 8 exists, OCII, as the CFD No. 8, will review and approve the Operations Plan for the HPSY1 Parks, subject to the availability of CFD No. 8 funds to implement the Operations Plan, after deducting its administrative costs.
- d. RPD will be responsible for appropriate Park Code enforcement through its Park Ranger division, and the procurement of and payment for any required utilities, for the HPSY1 Parks

4.3 Public Trust Requirements. Those Completed HPSY1 Trust Parks are subject to (1) the Public Trust; (2) Sections 13 and 15 of SB 792, (3) the statutory trust imposed by the Burton Act (Chapter 133, Statutes of 1968, as amended), and any additional restrictions on use and alienability created by the Agreement Relating to Transfer of the State of California to the City and County of San Francisco dated January 24th 1969 and recorded at Book B308, Page 686 of the Official Records; and (4) statutes applying generally to all political subdivisions of the state that have been granted Public Trust lands by the State including without limitation Public Resources Code section 6306 (together, the “**Public Trust Requirements**”). RPD agrees to operate the Completed HPSY1 Trust Parks in compliance with the Public Trust Requirements.

4.4 Trust Revenues. RPD hereby acknowledges and agrees that the Public Trust Requirements include restrictions and requirements relating to revenues arising from the Completed HPSY1 Trust Parks. While RPD anticipates that the cost of operating and maintaining the Completed HPSY1 Trust Parks will significantly exceed any revenues received from the Completed HPSY1 Trust Parks, RPD shall comply with such restrictions and requirements, including without limitation:

- a. All revenues received from the Completed HPSY1 Trust Parks administered or collected by RPD will be expended only for those uses and purposes consistent with the Public Trust Requirements.
- b. All funds received or generated from the Completed HPSY1 Trust Parks will be segregated in separate accounts from non-trust received or generated funds.
- c. As required by the State Lands Commission, RPD will file with the State Lands Commission a detailed statement of all revenues and expenditures relating to

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its management of the Completed HPSY1 Trust Parks, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement.

4.5 RPD hereby acknowledges and agrees that the Public Trust Requirements apply to the Completed HPSY1 Trust Parks independently of this Agreement and will continue to apply to City HPSY1 Trust Parks following any termination of this Agreement.

4.6 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. 8 or limit the Charter authority or regulatory authority of any City department as it relates to the HPSY1 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.

4.7 Annual Budgets. RPD and SFAC shall each on February 1 of each year submit to OCII budgets for their respective maintenance and operations duties under this Agreement (each an "O&M Budget") and shall seek annual budget authorizations and, on a reimbursement basis, seek funding from CFD No. 8. O&M Budgets must have sufficient detail including staffing, contracts, utilities, material, supplies and equipment. Hourly rates to be included in O&M Budgets will be based on salary and mandatory fringe benefits. Actual labor charges submitted as part of RPD billing must be supported by a City Labor Distribution Report or similar payroll report to verify the actual cost of employee salary and fringe benefits. Labor charges submitted must not be based on estimated full time employee(s), a budgeted amount, or any percentage allocation that is not reviewed and approved in advance by OCII.

4.8 CFD Approval of Budgets.

- a. For so long as CFD No. 8 exists, the Successor Agency Commission, acting as the legislative body of CFD No. 8, will approve, in its sole discretion, the O&M Budgets, subject to appropriation in the CFD annual budget and the CFD No. 8 funds available to implement the O&M Budgets.
- b. The parties agree to work together in good faith to maximize available funding from CFD No. 8. OCII may provide Other OCII Funds to meet the O&M Budgets, subject to OCII's discretion and/or any legal or contractual constraints applicable to those funding sources. If CFD No. 8 annual revenue, reserves, and those Other OCII Funds that OCII makes available are together not sufficient to meet the O&M Budgets and OCII's reasonable administrative costs, OCII shall first use its reasonable discretion to allocate the available CFD No. 8 funds
- c. The parties may additionally seek supplemental funds from the City. RPD and SFAC may, jointly or separately, submit their respective O&M Budgets to the Mayor's Office and request sufficient funds to cover the shortfall, consistent with the CFD Requirements. Nothing in this Agreement may be construed as requiring or authorizing OCII to use property tax revenues (formerly tax increment) or other funds to fund the maintenance of the HPSY1 Parks. Nothing in this Agreement requires OCII or the City departments to spend funds that have not been appropriated for the HPSY1 Parks in their annual budgets.

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4.9 Coordination of Operation and Management. RPD and SFAC, in consultation with OCII acting as CFD No. 8, will meet and confer from time to time at the request of any of the parties, to coordinate efforts, and address any operational, 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 SFAC, the Civic Art Collection and Public Art Program Director; and for OCII, Deputy Executive Director of Projects and Programs.

4.10 Billing Procedures. RPD and SFAC will submit invoices to OCII on a quarterly basis within thirty days after the end of each quarter, not to exceed the amount in the annual CFD budget. The invoices will include an actual 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 thirty days after a completed reimbursement request is submitted by RPD or SFAC.

4.7 4.11 Maintenance Responsibility Transfer. RPD may transfer to another entity any and all maintenance responsibilities from time to time, with the consent of the Successor Agency Commission as the CFD No. 8 and RPD Commission, and any such transfer shall result in a corresponding change to the Operations Plan and RPD's O&M Budget. Any such transfer shall be in writing, and RPD, in consultation with the Controller and the Mayor's Budget Director, will work with CFD No. 8 to ensure that the CFD No. 8 Funds are allocated in accordance with the Operations Plan and O&M Budget.

5. 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. 8 budget approved by the Successor Agency Commission. This Agreement is subject to the budgetary and fiscal provisions of City's Charter consistent with the CFD Requirements. 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.

6. SIGNAGE

RPD will install park signage according to standard RPD specifications and designs, that is consistent with the Redevelopment Plan, so long as it is in effect.

7. PERMITTED USES; CONTRACTING

7.1 Permitted Uses. The Completed HPSY1 Parks will be used for parks and open spaces, consistent with the Redevelopment Plan and Plan Documents until their expiration, the CFD Requirements and, within the Completed HPSY1 Public Trust Parks, with the Public Trust Requirements, as further described in the Operations Plan (the "Permitted Uses"). RPD will use best efforts to ensure that all of the Completed HPSY1

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Parks are used for the Permitted Uses at all times. Any change to the Permitted Uses must be approved by both RPD and OCII.

7.2 Entry. RPD and SFAC may enter the OCII HPSY1 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.

7.3 Merchandise, Sales and Concessions. Subject to the Public Trust Requirements (for the Completed HPSY1 Public Trust Parks) and any limitations or requirements set forth in the Operations Plan, the Parks Code and any regulation specific to the Completed HPSY1 Parks, RPD and SFAC may (1) sell branded and other program-related merchandise at the Completed HPSY1 Parks to promote its own organization and fundraising for the Completed HPSY1 Parks, (2) allow sales and concessions, and (3) host special events.

7.4 Contracts. RPD and SFAC will each be responsible for entering into contracts, leases and permits on the portion of the Completed HPSY1 Parks that it maintains under this Agreement, in accordance with its standard contracting processes, the Public Trust Requirements for the Completed HPSY1 Public Trust Parks, and other applicable law.

8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW

8.1 Compliance with Agreements and Law. RPD and SFAC shall not use or permit the Completed HPSY1 Parks to be used in a manner that violates this Agreement, the Redevelopment Plan and Plan Documents so long as they are in effect, the Public Trust Requirements within the Completed HPSY1 Trust Parks, applicable Municipal Codes including the City's Park Code (collectively, the "**Park Codes**") or other applicable laws, or that would materially interfere with the primary purposes of public access to the HPSY1 Parks.

Prohibited Activities. **Except as otherwise required for park maintenance or as described in the Operations Plan, SFAC and RPD will not: (i) allow overnight camping at the Completed HPSY1 Parks; (ii) conduct or allow activities that would unreasonably prevent or materially impede public access to Completed HPSY1 Parks; or (iii) allow any After Hours Permit without ensuring that appropriate community outreach has been conducted.**

8.2 Hazardous Materials; Indemnity. Each party will comply with, and will ensure that its contractors comply with, the requirements of that certain Article 31 Ordinance #303-04 adopted by the Board of Supervisors in 2004 and amended in 2010 (Ordinance #204-10), covering among other properties, the HPSY1 Parks as it relates to any of their activities which may disturb 50 cubic yards of soil or greater. SFAC and RPD will promptly notify the other and OCII if there is a disturbance of 50 cubic yards of soil or greater, in or around the HPSY1 Parks. SFAC 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 HPSY1 Parks. SFAC and RPD will cooperate in any action against the party responsible for the release. The City shall Indemnify (as defined in Section 9) OCII and its Agents from any Claims (as defined in Section 9) resulting from any spilling, leaking,

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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 provided, however, that the City shall have no liability, nor any obligation to Indemnify any person for any such Claim resulting from 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 DDA.

INDEMNITY AND INSURANCE

8.3 City 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 HPSY1 Parks, or any part thereof, from any cause whatsoever, (b) City’s use of the HPSY1 Parks that City manages pursuant to this Agreement, or (c) any acts or omissions of City or its Agents in, on, or about the HPSY1 Parks that City manages pursuant to this Agreement; provided, however, that this indemnity shall exclude claims, liability, damage or loss resulting from the sole negligence or willful misconduct of OCII or its Agents, 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.

8.4 City Department Responsibility. In the event of a Claim for which the City Indemnifies OCII pursuant to Section 9.1, SFAC 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

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management responsibilities for the HPSY1 Park or SFAC Public Artwork where the Claim arose will have responsibility for any resulting City liability.

RPD and SFAC Self-Insurance. The parties acknowledge and agree that RPD and SFAC self-insures for general liability, automobile liability and workers' compensation and that such self-insurance shall cover any losses, claims or damages incurred by RPD and/or SFAC directly or indirectly arising out of or connected with this Agreement, and any RPD and/or SFAC's activities under this Agreement, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless. However, at its sole discretion, RPD and/or SFAC may purchase a policy of insurance to cover against any potential exposure to loss under this Agreement.

9. DESIGN AND DEVELOPMENT OF FUTURE HPSY1 PARKS.

The term “**Future HPSY1 Parks**” includes, as shown in Exhibit A, Hilltop Parks that as of the date of the Agreement have not received a Certificate of Completion and all Hillside Parks. All Hillside Parks have received Schematic Design approval from the OCII Commission (Resolution ____). RPD shall review the Schematic Designs and construction drawing for all Hillside Parks to ensure the designs will allow for efficient operations of the Hillside Parks and the materials being used are of a quality and standard acceptable to RPD. RPD will review all construction drawings in a timely manner so as not to delay the construction of the Hillside Parks. Nothing herein shall amend or adversely affect OCII's authority and obligations, including without limitation financial obligations, under the Plan Documents or DDA.

10. TERMINATION OF MOA

Pursuant to Section 7 of the MOA, this Agreement shall supersede, replace, and terminate the MOA as of the Effective Date of this Agreement, except that the “Approved Budget” described in Section 3 of the MOA shall remain in effect through its stated term or until modified by the Parties.

DISPUTE RESOLUTION

10.1 If a dispute between or among OCII, RPD, and SFAC arises under this Agreement, the contact person for the 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.

10.2 Neither this Section 12 nor compliance therewith shall waive any party's right, upon completion of the process set out in Section 12.1, to seek any remedy available at law or equity.

11. 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

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following addresses, or at such other addresses as the agencies listed below may designate by notice as their new address:

Address for SFAC: SFAC
San Francisco Arts
Commission
401 Van Ness Avenue
San Francisco, CA 94102

Telephone No: (415) 252-2266

Address for RPD: General Manager
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: (628) 652-8500

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.

12. MISCELLANEOUS

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

12.2 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.

12.3 All approvals under this Agreement and any agreements contemplated hereby may be given by the OCII Executive Director, RPD General Manager, and SFAC Director of Cultural Affairs, or their respective designees, except as otherwise specified herein or in the City Charter, the City's Municipal Code, or other applicable law.

EXHIBIT A

12.4 This Agreement may be amended only by a signed writing of OCII, RPD, and SFAC, which must be approved by the Successor Agency Commission and the City departments' commissions.

12.5 Any failure or delay by any Party in asserting any of its rights or remedies, including specific performance, as to any claim arising from his Agreement shall not operate as a waiver of any default or of any such rights or remedies or deprive that Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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 ARTS COMMISSION

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

By: ____

RALPH REMINGTON
Director of Cultural Affairs

Sarah Madland
Interim General Manager

San Francisco Arts Commission

San Francisco Recreation and Park Department

Date Signed: _____

Date Signed: _____

San Francisco Arts Commission
Resolution No. _____

San Francisco Recreation and Park Department
Resolution No. _____

Approved by San Francisco Board of Supervisors
Resolution No. _____

REVIEWED:
DAVID CHIU, City Attorney

EXHIBIT A

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

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 in its ordinary capacity and in its capacity as trustee of the public trust and acting under its authority as Community Facilities District No. 8

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

Date Signed: _____
[Successor Agency Commission Resolution No.

_____]

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

By: _____
James B. Morales
OCII General Counsel

EXHIBIT A

EXHIBIT A

MAP OF HPSY1 PARKS

Including Future HPSY1 Parks, HPSY1 Trust Parks and Completed HPSY1 Parks

EXHIBIT A

EXHIBIT B
SFAC PUBLIC ARTWORKS

The public artworks within the HPSY1 Parks that are to be transferred to the San Francisco Arts Commission and accessioned into the City's Civic Art Collection are the following:

1. Stream of Consciousness, by Heidi Hardin with Colette Crutcher and Michael Azgour (2013)
2. Bayview Horn, by Jerry Ross Barrish (2015)
3. Butterfly Girl, by Jason Webster (2015)
4. Flotilla, by Eric Powell (2015)
5. Frame, by Mildred Howard (2015)
6. Hale Konon, Jessica Kay Bodner (2015)
7. Refrain, Walter Hood (2015)
8. Visions from the Past/Visions for the Future, by Marion Coleman (2015)

EXHIBIT A

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