

**FIRST AMENDMENT TO THE AGREEMENT
BETWEEN THE SAN FRANCISCO RECREATION
AND PARK DEPARTMENT AND THE FRANCISCO PARK
CONSERVANCY, DATED JULY 29, 2016**

This Amendment is made and entered into as of July 1, 2022 (the “Effective Date”), by and between the City and County of San Francisco (the “City”), acting by and through its Recreation and Park Department (“RPD”), and the Francisco Park Conservancy, a California non-profit public benefit corporation (“FPC”).

- A. WHEREAS, RPD and FPC entered into the Agreement Between the San Francisco Recreation and Park Department and the Francisco Park Conservancy, dated July 29, 2016 (“the Agreement”), to delineate their responsibilities and rights regarding the design, construction, operation and maintenance of a park on the Francisco Reservoir site and adjacent property in the City and County of San Francisco (“the Park”); and
- B. WHEREAS, when the Park construction was almost complete, the Parties determined that it would be appropriate to modify the Agreement as stated herein, to memorialize how to pay for certain excess charges that the Parties did not anticipate when they first entered into the Agreement.

NOW, THEREFORE, the Parties agree as follows:

- 1. **Definitions.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.
- 2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

- A. RECITAL K is added to the Agreement, as follows:

K. In early 2022, with the Park construction almost complete, the Parties identified \$885,592 in excess charges, summarized in Exhibit K, that the Parties did not anticipate FPC would incur when they first entered into the Agreement (the “Excess Charges”). The Parties have agreed to allocate the Excess Charges pursuant to Section 5.2.6, subdivision (3).

- B. SECTION 5.2.6, SUBDIVISION (3), is added to the Agreement as follows:

(3). Notwithstanding the foregoing, the Parties agree to reduce the FPC’s obligation to fund the maintenance of the park based on the amount of Excess Charges that remain after the City’s 2022-23 budget process. The Parties understand and acknowledge that City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors and that City has no obligation to make appropriations. With that understanding, RPD shall seek an appropriation of funds during the 2022-23 budget process from the Board of Supervisors to pay the Excess Charges, and any funds received for this purpose shall be applied accordingly. Any remaining balance (the “Remaining Charges”)

shall then be allocated equally between the Parties, with RPD's share of the Remaining Charges credited against FPC's maintenance obligation over the next four (4) years. Upon conclusion of the 2022-23 budget process, the Parties shall prepare a schedule that memorializes the total Remaining Charges and how they will be allocated consistent with this subdivision (3).

C. SECTION 33 is added to the Agreement, as follows:

33. Reporting & Disclosure Obligations. FPC understands and acknowledges that this Agreement, and any document between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act. In addition, FPC agrees to disclose information regarding the amounts and sources of funding and donor financial interest information as set forth in Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to RPD, and to provide all information reasonably requested by RPD to enable RPD to comply with its disclosure obligations. To ensure compliance with this requirement and to maximize public transparency, FPC will not, from and after the execution of the Amendment, accept anonymous donations from a single source aggregating more than \$100 for purposes covered under this Agreement. These provisions shall also apply to any grants received by FPC, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.

34. Conflicts of Interest. By executing this Amendment, FPC certifies to the best of its knowledge that it does not know of any fact that constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees to promptly notify the City if it becomes aware of any such fact during the term of the Agreement. In addition, the Parties agree and acknowledge that FPC or its donors' fiscal support of RPD, or lack thereof, shall have no bearing on and shall not be relevant towards any future contracting, leasing, or permitting decisions by RPD.

35. Statement of Incompatible Activities. RPD's Statement of Incompatible Activities (SIA) was adopted under section 3.218 of the San Francisco Campaign & Governmental Conduct Code. In general, RPD's SIA (1) prohibits outside activities that are incompatible with RPD's mission; (2) restricts the use of City resources, City work-product, and prestige for any non-City purpose, including any political activity or personal purpose; and (3) prohibits receipt/acceptance of gifts in exchange for doing the employee's job. A copy of the SIA is attached as Exhibit L. FPC agrees it will not knowingly cause RPD staff to violate the SIA. In addition, FPC shall ensure that no employee or officer of RPD is a member of FPC's board of directors or otherwise holds a fiduciary position with FPC, and shall use reasonable best

efforts to ensure that no employee or officer of RPD and no member of an RPD employee or officer's immediate family receives income from FPC.

3. **Counterparts.** This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.
4. **Entire Agreement.** This Amendment sets forth the entire understanding of the parties on the subject matter of this Amendment. There are no agreements between the parties relating to the Amendment other than those set forth herein. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.
5. **Agreement in Full Force and Effect; Amendment Prevails.** Except as amended hereby, the Agreement remains unmodified and in full force and effect, and shall not be construed otherwise to enlarge or reduce the rights or obligations of the parties. To the extent the provisions of this Amendment conflict with the provisions of the Agreement, this Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment:

CITY AND COUNTY OF SAN FRANCISCO	XXXXX
By: _____ Philip A. Ginsburg, General Manager Recreation and Park Department	By: _____ Title Name
DATE: _____	DATE: _____
APPROVED AS TO FORM: DAVID CHIU City Attorney By: _____ Manu Pradhan Deputy City Attorney	