

MEMORANDUM OF UNDERSTANDING
(Francisco Street Reservoir)

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”), dated for reference purposes only as of _____, 2014 (the “**Agreement Date**”), is by and between the City and County of San Francisco Recreation and Park Department (“**RPD**”) and the City and County of San Francisco Public Utilities Commission (“**PUC**”).

RECITALS

A. The City and County of San Francisco (“**City**”) owns that certain property (the “**Site**”) described in attached **Exhibit A** and depicted approximately in the attached **Exhibit B**.

B. PUC obtained jurisdiction over the Site at some time after the City purchased the Site in 1930 for the PUC’s predecessor, the San Francisco Water Department.

C. Pursuant to Charter Section 8B.121, PUC has exclusive charge of real assets under its jurisdiction. PUC, by Resolution No. **XXX-XX**, adopted on [**DATE**], 2014, determined that the Site is surplus to the needs of any utility under its jurisdiction, and PUC wishes to transfer jurisdiction of the Site in exchange for fair market value, as required by applicable law, subject to Board of Supervisors approval of a jurisdictional transfer consistent with this MOU. Fair market value was established based on the appraised value for the Site set forth in the appraisal prepared by Clifford Advisory LLC dated September 15, 2013 and approved by the Director of City’s Real Estate Division (“**RED**”) (the “**Appraisal**”), in the total amount of \$9.9 million dollars.

D. RPD wishes to acquire jurisdiction over the Site in order to explore the feasibility of developing a neighborhood park, consistent with the Board of Supervisors’ Resolution No. 502-08, adopted on December 16, 2008. RPD has not undertaken any planning or design for such a potential park. On May 20, 2014, the City Planning Department opined that the jurisdictional transfer of the Site from PUC to RPD would not be subject to the California Environmental Quality Act Public Resources Code Section 21000 *et seq.* (CEQA), pursuant to CEQA Guidelines Section 15060(c)(2), which provides that an activity is not subject to CEQA if the activity will not result in a direct or reasonably foreseeable indirect physical change to the environment.”

E. PUC is willing to transfer possession and jurisdiction to RPD, and RPD is willing to accept such transfers, on the terms and subject to the conditions set forth in this MOU.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Transfer of Possession. On September 30, 2014, or within thirty (30) days after the MOU Execution Date [as defined in Section 4(b)(1)], whichever is later, PUC will tender possession of

the Site to RPD, provided that the first Payment has been timely made by RPD as provided in Section 4(d). Such delivery of possession to RPD shall be referred to herein as the “**Initial Closing**.” RPD acknowledges that PUC will retain jurisdiction over the Site until the Final Closing (as defined in Section 3), and any investment in Site improvements prior to the Final Closing shall be at RPD’s sole risk. RPD’s possession of the Site from the Initial Closing to the Final Closing shall be subject to the terms of Section 5. In no event shall the Site be considered open space or park land under the City Charter until a transfer of jurisdiction occurs on the Final Closing.

3. Transfer of Jurisdiction. No later than thirty (30) days after RPD delivers the final Payment to PUC thereby completing payment in full of the RPD Transfer Price and all outstanding interest in accordance with Section 4, or a later date mutually agreed upon by PUC and RPD (the “**Closing Date**”), PUC shall transfer jurisdiction over the Site to RPD by submitting to RED all necessary materials to enable RED to effect the full jurisdictional transfer of the Site to RPD, and RED shall memorialize the jurisdictional transfer of the Site in the City’s real estate records (the “**Final Closing**”).

4. RPD Transfer Price; Payments for Site.

(a) RPD Transfer Price. In consideration of the jurisdictional transfer of the Site and the interim transfer of possession of the Site pending payment in full, RPD shall pay PUC an amount (the “**RPD Transfer Price**”) equal to Nine Million Nine Hundred Thousand Dollars (\$9,900,000), in installments as provided in Section 4(d) below, together with interest on the unpaid principal balance from time to time outstanding at an annual interest rate equal to the Interest Rate, as defined below. The RPD Transfer Price for the Site was established based on the Appraisal.

(b) Interest; Interest Rates.

(1) Basic Interest Rate. Subject to Section 4(b)(2) below, interest on the unpaid principal balance will accrue at the Interest Rate from the day this MOU is executed by RPD and PUC (following approval by City’s Board of Supervisors and Mayor and all necessary approvals by the RPD Commission and PUC Commission) (the “**MOU Execution Date**”). The “**Interest Rate**” shall be the average annual rate of interest earned on the City’s pooled investment funds during the fiscal year that ends on the June 30th preceding the Payment Date (as defined in Section 4(d)) in question. Such rate is reported as “Earned Income Yield” in the City Treasurer’s annual report of pooled fund portfolio statistics, which is posted on the Treasurer’s website under Investment Reports.

(2) Default Rates. Any principal not paid on the Payment Date when due (the “**Due Date**”) shall then automatically bear interest at an increased interest rate determined as follows (the “**Default Rate**”). From the Due Date until the one-year anniversary of the Due Date, the Default Rate shall be the annual Interest Rate that was applicable on the Due Date plus one (1) percentage point. For principal that remains delinquent for more than one year, the Default Rate shall be adjusted on each September 30th (commencing on the one-year anniversary of the Due Date) to be equal to the annual Interest Rate applicable to nondelinquent payments due on such September 30 plus four (4) percentage points.

(c) Application of Payments. Each Payment shall be credited first to interest then due and any remainder to principal. All payments of principal shall be applied to the most remote principal installment then unpaid.

(d) Payment Schedule. The RPD Transfer Price and accrued interest shall be paid in twelve installments (each, a “**Payment**”) in accordance with the payment schedule set forth below. The first Payment shall be due on the later of September 30, 2014, or thirty (30) days after the MOU Execution Date. The second Payment shall be due on September 30 of the next fiscal year. The remaining 10 Payments shall be due on September 30 of each succeeding fiscal year. Each such due date is referred to herein as a “**Payment Date**.” By August 15 prior to each Payment Date, PUC will deliver an invoice to RPD, setting forth the amount payable on the Payment Date and providing a breakdown of principal and interest. If RPD has questions or concerns about the invoice, the parties shall meet and confer in good faith to resolve the issues.

Subject to appropriation and approval by the Board, RPD shall make the Payments according to the following schedule:

Payment	<u>Payment Due Date</u>	Payment Amount
1	Later of 9.30.14 or 30 days after MOU Execution Date	\$207,918.90 in principal, plus accrued interest
2	9.30.15	\$198,018.00 in principal, plus accrued interest
3	9.30.16	\$198,018.00 in principal, plus accrued interest
4	9.30.17	\$425,738.70 in principal, plus accrued interest
5	9.30.18	\$455,441.40 in principal, plus accrued interest
6	9.30.19	\$455,441.40 in principal, plus accrued interest
7	9.30.20	\$950,486.40 in principal, plus accrued interest
8	9.30.21	\$980,189.10 in principal, plus accrued interest
9	9.30.22	\$1,039,594.50 in principal, plus accrued interest
10	9.30.23	\$1,564,342.20 in principal, plus accrued interest
11	9.30.24	\$1,633,648.50 in principal, plus accrued interest
12	9.30.25	\$1,792,062.90 in principal, plus any other remaining unpaid principal and accrued interest

If RPD proposes a restructuring of any of Payments 7 through 11, PUC will consider such restructuring, provided that RPD proposes the restructuring in writing at least one year in advance with an explanation of the reasons for the requested restructuring. PUC will not unreasonably withhold agreement to a proposed restructuring, taking into consideration such factors as PUC’s ratepayer obligations, RPD’s payment history, the circumstances giving rise to

the proposed restructuring, and PUC's determination, in its sole judgment, of the impact the restructuring may have on the likelihood of RPD completing payment in full by the twelfth Payment.

(e) Prepayment. RPD's obligation may be prepaid at any time, in whole or in part, without premium or penalty, as long as any principal prepayment is accompanied by a payment of interest accrued to the date of prepayment on the amount prepaid.

(f) Termination Default.

(i) Termination Default. If RPD fails to pay a Payment in full when due and payable, which failure is not cured by the second anniversary of the Due Date (which cure deadline shall be extended by the period of any Unavoidable Delay as defined in Section 4(g)), such failure shall constitute a "**Termination Default**."

(ii) Termination Notice; Termination Date. At any time after a Termination Default until the delinquent Payment and accrued default interest (together, the "**Cure Amount**") are paid, PUC may, at its option, terminate this MOU and RPD's right of possession by giving not less than thirty (30) days' notice to RPD ("**Termination Notice**"). Any such Termination Notice shall identify the effective date of the termination ("**Termination Date**"), which shall be a date not less than thirty (30) days after delivery of the Termination Notice to RPD.

(iii) Termination of MOU. If RPD fails to pay the Cure Amount in full by the Termination Date [which may be extended by the period of any Unavoidable Delay as provided in Section 4(g)], this MOU and RPD's right of possession shall end on the Termination Date, in which event (i) RPD shall surrender possession of the Site to PUC in accordance with the following subparagraph (iv); (ii) RPD and PUC shall each be relieved of all obligations accruing hereunder after the Termination Date, other than those that expressly survive termination and those required to be performed in connection with the termination or surrender of possession; and (iii) PUC shall thereafter have the right to use the Site for any purposes, including transferring the Site to a third party for other uses. If the Termination Default giving rise to the Termination Notice is based on a delinquency in any of Payments 1 through 5, PUC shall retain all interest payments but shall refund to RPD the amount of all principal payments received from RPD prior to such termination, within one hundred eighty (180) days after RPD surrenders possession of the Site in accordance with this paragraph. If the Termination Default giving rise to the Termination Notice is based on a delinquency in any of Payments 6 through 12, PUC shall retain all interest payments previously received from RPD and shall refund principal payments previously received from RPD according to the following schedule:

Delinquent Payment on which the Termination Default is Based	<u>Principal Refund Schedule</u>
1	PUC shall refund 100% of RPD's principal payments.
2	PUC shall refund 100% of RPD's principal payments.
3	PUC shall refund 100% of RPD's principal payments.
4	PUC shall refund 100% of RPD's principal payments.
5	PUC shall refund 100% of RPD's principal payments.
6	PUC shall refund 50% of RPD's principal payments.
7	PUC shall refund 40% of RPD's principal payments.
8	PUC shall refund 30% of RPD's principal payments.
9	PUC shall refund 20% of RPD's principal payments.
10	PUC shall refund 10% of RPD's principal payments.
11	PUC shall not issue any refund of RPD's principal payments.
12	PUC shall not issue any refund of RPD's principal payments.

For example, if RPD fails to make Payment 7 on or before September 30, 2020, and thereafter fails to pay the Cure Amount before September 30, 2022, such failure shall be a Termination Default. If PUC sends a Termination Notice based on such failure and RPD fails to pay the Cure Amount before the Termination Date, this MOU and RPD's right of possession shall terminate and PUC shall refund to RPD 40% of the principal payments previously received.

(iv) **Surrender of Possession.** Upon the termination of this MOU, RPD shall surrender the Site in broom clean condition, free from hazards and clear of all debris. At such time, RPD shall remove all of its signs, personal property and equipment from the Site and, upon the PUC's reasonable request, any recreational structures or improvements installed by or for RPD, and shall repair, at its cost, any damage to the Site caused by such removal. RPD's obligations under this paragraph shall survive the termination of this MOU.

(g) **Unavoidable Delay.** For purposes hereof, "Unavoidable Delay" shall mean any period in which RPD is unable to perform due to terrorist or enemy action, riots, explosion, flood, hurricane, earthquake, firestorm or other natural disaster. In the event of any Unavoidable Delay, RPD shall give prompt written notice to PUC of the occurrence of such event and the projected delay in performance, and thereafter shall keep PUC regularly informed

of the status of such Unavoidable Delay. Under no circumstances shall the number of days of Unavoidable Delay for any one event exceed a total of thirty (30) days.

(h) Transaction Costs. RPD and PUC shall each bear its own attorney and consultant fees and costs incurred in negotiating this MOU, except that RPD and PUC shall each bear fifty percent (50%) of the attorney fees for the Deputy City Attorney assigned to prepare this MOU and advise both parties on real estate legal issues. Any costs charged by RED and the City Attorney's Office to effect the jurisdictional transfer of the Site pursuant to Section 3 shall be born by RPD.

5. RPD's Interim Possession. Commencing on the Initial Closing and continuing until the earlier of the Termination Date or the Final Closing, the following terms and conditions shall apply.

(a) Permitted Use. RPD may use the Site and allow its employees, agents, consultants, contractors, authorized representatives, invitees and guests (together, "**RPD Affiliates**") to use the Site only for purposes within RPD's authority under Section 4.113 of the City's Charter. RPD's rights under this MOU may be exercised by RPD's contractors and any donors under contract with RPD to provide services and/or funds for the development of the Site ("**RPD Donors**"), subject to the terms and conditions of this MOU.

(b) Improvements.

(i) Advanced Notice. RPD shall not construct or place any permanent structures or improvements in, on, under or about the Site, nor shall RPD make any alterations or additions to any existing structure or improvement on the Site, without providing thirty (30) days' prior written notice and a copy of the plans and specifications to the PUC.

(ii) Improvements Requiring Consent. Any improvement, alteration or addition (individually or collectively, "**Improvements**") inconsistent with the permitted uses shall require PUC's prior written consent. RPD shall request such consent by written notice to the PUC which such notice shall be accompanied by the plans and specifications for such Improvements. PUC shall give or withhold consent to such Improvements in its reasonable discretion within fifteen (15) days following PUC's receipt of RPD's request for consent. For purposes hereof, asphalt, concrete and cementitious concrete driveways, sidewalks and parking areas, shacks and storage facilities, and fences shall be deemed "Improvements."

(c) Dumping. RPD shall not cause or permit the dumping or other disposal in, on, under or about the Site of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to materials that are unsightly or could pose a hazard to human health or safety, native vegetation or wildlife, or the environment.

(d) Hazardous Material. RPD shall not cause, nor shall RPD allow any of the RPD Affiliates to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released or disposed of in, on, under or about the Site, or transported to, from or over the Site. RPD shall immediately notify the PUC when RPD learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under or about the Site. RPD shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts

and the like (collectively, Laws) requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. In the event that RPD or RPD Affiliates cause a release of Hazardous Material, RPD shall, without cost to the PUC and in accordance with all Laws and using the highest and best technology available, promptly return the Site to the condition immediately prior to the release. In connection therewith, RPD shall afford the PUC a full opportunity to negotiate and participate in any discussion with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material, and any other abatement or clean-up plan, strategy and procedure. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, the following: any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Site or are naturally occurring substances in the Site; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids, provided, the foregoing shall not prohibit RPD from traversing to, from and across the Site in standard motor vehicles that do not exceed the weight limitations set forth below. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Site.

(e) Nuisances. RPD shall not conduct, or allow, any activities in, on, under or about the Site that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to the PUC, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(f) Damage. RPD shall not do anything in, on, under or about the Site that could cause damage or interference to any operational pipelines, cables or other property located in, on, under or about the Site. At RPD's written request, PUC shall notify RPD of any pipelines, cables or other utility facilities owned or operated by PUC in, on or under the Site that remain in operation. RPD shall be responsible for identifying and locating any third party facilities in, on or under the Site.

(g) Ponding; Water Courses. RPD shall not conduct or allow any activities in, on, under or about the Site that cause any ponding on the Site or any flooding on adjacent land.

(h) Maintenance and Repair. RPD shall maintain the Site in good, sightly condition and repair at its sole cost. The PUC shall have no obligation to maintain or repair any or all of the Site.

(i) Insurance, Indemnity and Warranties.

(i) RPD shall cause its contractors and subcontractors, and any contractors and subcontractors retained by RPD Donors to design and construct any Improvements for the Site, to maintain at all times such insurance as the City Risk Manager recommends. The City and its officers, commissioners, agents and employees shall be included as additional insureds with respect to any such insurance.

(ii) RPD shall cause the City to be named as beneficiary of all warranties and guaranties from contractors and suppliers related to the construction of Improvements on the Site. To the extent that any Improvements will be constructed by contractors of RPD Donors, RPD will require that the RPD Donors enforce such warranties and guaranties or assign such warranties and guaranties to the City.

(iii) RPD shall require that the City, including but not limited to all of its boards, commissions, departments, agencies and other subdivisions, and all of its and their agents, employees, officers, contractors and representatives, and their respective heirs, legal representatives, successors and assigns be included as an indemnified party in any indemnification provision between RPD and the RPD Donors or any agent, contractor or subcontractor RPD hires in connection with its use of the Site.

(j) Compliance with Laws. RPD shall, at its expense, conduct and cause to be conducted all activities on the Site allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) and all covenants, restrictions and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the Parties. RPD shall, at its sole expense, procure and maintain in force at all times during its use of the Site any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. RPD understands and agrees that the PUC is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Site and not as a regulatory agency with police powers. RPD further understands and agrees that no approval by the PUC for purposes of this Agreement shall be deemed to constitute approval of any federal, state, the PUC or other local regulatory authority with jurisdiction, and nothing herein shall limit RPD's obligation to obtain all such regulatory approvals at RPD's sole cost, or limit in any way the PUC's exercise of its police powers.

(k) Repair of Damage. If any portion of the Site on or about the Site is damaged or threatened by any of the activities conducted by RPD or anyone acting by or through RPD hereunder, RPD shall immediately, at its sole cost, notify the PUC by telephone and by email of such damage or threat, by telephone and email to the telephone number and email address in Section 8 as well PUC's CDD Emergency Dispatch number [(415) 550-4956 or 550-4900]. The PUC may, but shall not be obligated to, remedy such damage or threat at RPD's sole cost, or the PUC may elect to witness RPD's repair work. In the event the PUC elects not to remedy such damage or threat, RPD shall repair any and all such damage and restore the Site to good, slightly condition subject to the PUC's inspection, review and approval. RPD shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

(m) No Costs to the PUC. RPD shall bear all costs or expenses of any kind or nature in connection with its use of the Site, and shall keep the Site free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Site.

(n) Waiver of Claims.

(i) Neither the PUC nor any of its commissioners, departments, boards, officers, agents or employees (“**Agents**”) shall be liable for any damage to the property of RPD or RPD Affiliates or for any bodily injury to or death of any such persons, resulting or arising from the condition of the Site or its use by RPD or RPD Affiliates, and RPD expressly assumes responsibility for any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs (together, “Claims”), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with any such property damage, injury or death, or the physical or environmental condition of the Site and any related improvements or any law or regulation applicable thereto or the suitability of the Site for RPD's intended use .

(ii) RPD acknowledges that this MOU is subject to termination pursuant to Section 4 and in view of such fact, RPD expressly assumes the risk of making any expenditure in connection with this MOU, even if such expenditures are substantial.

(iii) The PUC would not be willing to enter into this MOU in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of the PUC or its Agents, and RPD expressly assumes the risk with respect thereto.

(iv) RPD accepts the Site in its “AS IS” condition, without representation or warranty of any kind by the PUC or its Agents, and subject to all applicable laws, rules and ordinances governing the use of the Site. Without limiting the foregoing, this Agreement is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Site, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

6. Conditions to Jurisdictional Transfer. Notwithstanding anything to the contrary contained herein (but subject to the remedies set forth in Sections 4(b) and 4(f) for delinquent payment), RPD shall have no obligation to make the Payments and complete the jurisdictional transfer unless all of the following conditions are satisfied:

(a) Prior to the Initial Closing, PUC shall have maintained the Site in substantially the same condition it was in as of June 1, 2014, and PUC shall not, without first obtaining RPD's prior written approval, have taken any of the following actions: (i) constructed any improvements on the Site, (ii) encumbered all or any part of the Site with any lien, transfer, grant, lease, license or other encumbrance, or entered into any contract affecting the Site, except for contracts that are terminable on thirty days notice or less, or (iii) caused or authorized any use of the Site different from the use of the Site as of the Agreement Date.

(b) Prior to the MOU Execution Date, RPD's Commission, PUC's Commission and the City's Board of Supervisors and Mayor, each in their respective sole discretion, shall have approved this MOU, the Park Transfer Price and the jurisdictional transfer of the Site.

(c) The Board of Supervisors and Mayor shall approve the annual appropriation of funds for RPD payments for the Site.

7. Approval Contingency. This MOU shall only be effective as of the date that all of the following conditions are met: (i) all parties hereto shall have executed this MOU; (ii) PUC's Commission, acting in its sole discretion, approves of this MOU and declares the Site surplus property, and (iii) RPD's Commission, acting in its sole discretion, approves of this MOU.

8. Notices. All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be delivered in person or sent by United States mail, postage prepaid, or reputable commercial courier, and addressed as follows:

If to PUC: San Francisco Public Utilities Commission
Real Estate Services
525 Golden Gate Avenue, 10th floor
San Francisco, CA 94102
Attn: General Manager
Tel No.: (415) 554-3155

With a copy to: San Francisco Public Utilities Commission
Real Estate Services
525 Golden Gate Avenue, 10th floor
San Francisco, CA 94102
Attn: Real Estate Director
Tel No.: (415) 487-5210
RES@sfgwater.org

If to RPD: Recreation & Parks Department
510 Stanyan Street – McLaren Lodge Golden Gate Park
San Francisco, CA 94102
Attn: Philip Ginsburg, General Manager
Fax No.: (415) 831-2096
Tel No.: (415) 831-2701

If to RED: Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

or such other address that a party may from time to time designate by notice to the other parties given pursuant to the provisions of this Section. Telephone or fax numbers are provided to facilitate communication and will not be a sufficient method of delivering notice. Any correctly

addressed notice sent by a method that provides confirmation of delivery shall be deemed delivered on the first date of confirmed delivery or confirmed attempted delivery.

9. Authority. All matters requiring PUC's approval under the express terms of this MOU (including any proposed restructuring of Payments or Interest Rate pursuant to Section 4(d)) shall be approved by the General Manager of PUC or his or her designee, and by the PUC Commission, if required. All matters requiring RPD's approval shall be approved of by the General Manager of RPD or his or her designee and by the RPD Commission, if required.

10. Identification and Application of Additional Funding Sources. RPD shall have the right to apply for any federal, state or local funds that may be available to pay for any costs incurred in developing the Site, respectively. PUC shall cooperate to provide any documents held by PUC that are needed to submit such applications or to qualify for distribution of such federal, state or local funds.

11. Cooperation. Subject to the terms and conditions of this MOU, PUC and RPD staff shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU. In addition to any conditions described in this MOU, the parties' obligations are expressly subject to the receipt of all legally required approvals following any required environmental review.

12. CEQA Compliance. RPD has not planned, designed, or proposed a project for the Site. Accordingly, all parties understand that, at such time any such project is proposed for the Park, such project would be subject to review under CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code, as well as all other applicable laws and regulations. The City, including RPD and PUC, retains absolute discretion to: (a) require modifications in any such project to mitigate significant adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts; (c) require the implementation of specific measures to mitigate any significant adverse environmental; (d) reject all or part of any such project as proposed if its economic and social benefits do not outweigh otherwise unavoidable significant adverse impacts of the project; or (e) approve any such project upon a finding that its economic and social benefits outweigh otherwise unavoidable significant adverse environmental impacts.

13. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the General Manager of PUC, or his or her designee, and the Director of RPD, or his or her designee, following any necessary approvals. (b) No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all exhibits) contains the entire understanding between the parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) Notwithstanding anything to the contrary set forth herein, no officer, director, or employee of PUC has the authority to bind PUC to any action contemplated herein unless and until its Commission and the Board of Supervisors or the Mayor, if necessary, approves thereof,

and no officer, director or employee of RPD has the authority to bind RPD to any action contemplated herein unless and until the Board of Supervisors or the Mayor, as applicable, approves of such action. (e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

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

PUC:

PUBLIC UTILITIES COMMISSION

By: _____
Harlan L. Kelly, Jr., General Manager

Date: _____

RPD:

RECREATION AND PARK

By: _____
Philip Ginsburg, General Manager

Date: _____

EXHIBIT A

SITE LEGAL DESCRIPTION

EXHIBIT B

PROJECT MAP