

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 19-2023

*Adopted June 6, 2023*

**AUTHORIZING A MEMORANDUM OF AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH THE PORT OF SAN FRANCISCO, FOR THE PROPERTY MANAGEMENT AND MAINTENANCE OF CERTAIN PARCELS WITHIN THE MISSION BAY OPEN SPACE SYSTEM STARTING JULY 1, 2023, FOR A MAXIMUM AMOUNT NOT TO EXCEED \$510,000 FOR A SIX-MONTH BUDGET CONSISTENT WITH THE APPROVED BUDGET FOR COMMUNITY FACILITIES DISTRICT NO. 5; MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA**

BASIS FOR RESOLUTION

- WHEREAS, The 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**”); and,
- WHEREAS, The Redevelopment Plans and related Plan Documents provide for, among other things, the development of parks and designate the location of parks in areas zoned for open space. The Redevelopment Plans define “Plan Documents” as implementing documents including without limitation any owner participation agreements, the Mission Bay South Design for Development, the Mission Bay North Design for Development and the Mission Bay Subdivision Ordinance and regulations adopted thereunder. The Redevelopment Plans expire in late 2028.; and,
- WHEREAS, 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 “**Owner**” or “**Master Developer**”) were obligated to develop, among other things, public open space, parks and plazas on the designated open space parcels in the Mission Bay North Project Area and the Mission Bay South Project Area, as shown in Exhibit A (the “**Open Space Parcels**”); and,
- WHEREAS, The Former Agency and the City and County of San Francisco, a municipal corporation and charter city (the “**City**”), entered into that certain Ground Lease dated for reference purposes as of November 16, 2001, as amended (the “**Ground Lease**”), whereby the Former Agency managed and maintained the Open Space Parcels after the Master Developer completed improvements and the City accepted them. Since entering into the Ground Lease, the Former Agency and the Successor Agency to the Former Agency (commonly known as the Office of Community Investment and Infrastructure or “**OCII**”) have fulfilled the required maintenance and certain other Ground Lease obligations through a third party, private contractor; and,

- WHEREAS, Under Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq., and Board of Supervisors Ordinance No. 215-12 (Oct. 4, 2012), OCII has assumed the rights and obligations under the Redevelopment Plans, Plan Documents, and the Ground Lease, subject to certain state requirements to complete and dispose of redevelopment assets in an expeditious fashion; and,
- WHEREAS, The City owns the fee interest in all of the Open Space Parcels and the Master Developer leases from the City those sites designated as future Open Space Parcels that have not yet been completed. In accordance with the Plan Documents, upon completion of the improvements to any particular Open Space Parcel, the City accepts the improvements, the lease with the Master Developer is terminated, and the Open Space Parcel is added to the Ground Lease between the City and OCII; and,
- WHEREAS, Some of the Open Space Parcels are subject to Public Trust Law and the oversight of the States Lands Commission. Under Public Trust Law, the State of California owns and controls certain natural resources, such as tidal and submerged lands or those areas that were formerly tidal or submerged lands, for the purpose of protecting the public’s interest in commerce, navigation, and fisheries. The State has designated the Port as trustee of certain Public Trust lands under the Burton Act (Chapter 1333 of Statutes 1968, as amended, the “**Burton Act Trust**”) and are under the jurisdiction of the Port . The Port currently manages open space parcels subject to Public Trust Law and is familiar with the applicable State Lands Commission requirements; and,
- WHEREAS, The Financing Plans to the OPAs required the Former Agency to undertake proceedings to form a community facilities district for the purpose of levying special taxes to fund the ongoing maintenance of the Open Space Parcels ; and,
- WHEREAS, On December 21, 1999, the Former Agency formed, by Resolution No. 217-99 (the “**Resolution of Formation**”), the CFD No. 5 under the Mello-Roos Community Facilities Act of 1982, Gov’t Code § 53311 et seq. The Resolution of Formation authorizes funding for services related to the ongoing operation, maintenance and repair of Open Space Parcels, as defined in the OPAs, until fiscal year 2043-44; and,
- WHEREAS, Under the Resolution of Formation, the maintenance “[c]osts to be funded shall be in amounts and for such purposes as determined by the [Former] Agency, and shall include all personnel or third party costs related to such maintenance, costs of maintaining irrigation systems and other equipment directly related to such maintenance, maintenance or replacement as needed of landscape areas, water features, bathrooms, trash receptacles, park benches, planting containers, picnic tables and other equipment or fixtures installed in areas to be maintained, insurance costs and any other related overhead costs, along with Agency personnel, administrative and overhead costs related to such maintenance and the District or to contracting for and managing third parties in connection with such maintenance or the District, all to the end that Agency or the City will not need to expend their own funds to maintain open space areas . . . so long as the District is in place.” Exhibit A (Description of Services to be Financed by the District) to Resolution No. 217-99 (Dec. 21, 1999); and,

- WHEREAS, On Following a special election of qualified electors in CFD No. 5, the CFD No 5 levied a special tax to maintain the Open Space Parcels. CFD No. 5 funds will remain available to cover park maintenance costs until fiscal year 2043-44. The Financing Plans to the OPAs provide that maintenance costs of the Open Space Parcels shall be payable from the proceeds of the special taxes and not from tax increment; and,
- WHEREAS, Redevelopment Dissolution Law requires OCII to dispose of the Former Agency’s real property interests, including the Ground Lease. The California Department of Finance approved Oversight Board Resolution No. 14-2015 (Nov. 23, 2015), which authorized, under Section 34191.5 of the Health and Safety Code, a long range property management plan (“**PMP**”) for OCII that requires, among other things, termination of OCII’s leasehold interests in the Open Space Parcels, but that acknowledges OCII’s continuing administration of CFD No. 5 maintenance funds as separate from the Redevelopment Dissolution Law. Termination of the Ground Lease and transfer of its obligations to the City will require certain legislative action that will not occur until later in 2023, at the earliest; and,
- WHEREAS, The Ground Lease authorizes OCII to fulfill its maintenance obligations through a contractor providing maintenance service. Currently, OCII has a contract with Parklab Open Space Management (“**POSM**”), which will expire on June 30, 2023. Prior to the termination of the Ground Lease, OCII seeks to enter into separate memoranda of agreements (“**MOA**”) whereby the City, through RPD and Port, assume, effective July 1, 2023, the maintenance obligations required under the Ground Lease and currently provided under the POSM contract. The parties agree that the MOA is an interim measure and that the Ground Lease remains in effect. Upon the future Ground Lease termination, the Commission will consider a new agreement providing CFD No. 5 maintenance funds for the City’s management of the Open Space Parcels; and,
- WHEREAS, The Port manages 7.5 miles of waterfront subject to the Public Trust Law and Burton Act 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; and,
- WHEREAS, OCII now wishes to enter into the MOA to allow the City, acting through the Port, to operate and maintain certain Completed Premises and the future P22 park identified in the MOA as Port Open Space Parcels, subject to the Ground Lease, the Plan Documents, and the Resolution of Formation; and,
- WHEREAS, The MOA amount of \$510,000 covers a six month budget for maintenance costs of the Port Open Space Parcels and is consistent with Commission Resolution No. 12-2023 (April 18, 2023) approving the CFD budget for FY 2023-24; and,
- WHEREAS, At its April 13, 2023 meeting, the Mission Bay Citizens Advisory Committee recommended to the Commission that it authorize the Executive Director to enter into a memorandum of agreement with the Port; and,

WHEREAS, Approval of the MOA with the Port is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15301 and 15304 because it authorizes the operation, repair, maintenance or minor alteration of existing facilities or topographical features with negligible or no expansion of existing uses and minor alterations to land; now, therefore, be it

RESOLVED, That the Commission authorizes the Executive Director to execute, substantially in the form of Exhibit A to this Resolution, the MOA with the Port in the amount of \$510,000 for a six-month operating and capital budget related to the property management of the Port Open Space Parcels in the Mission Bay Open Space System starting July 1, 2023.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of June 6, 2023 .

  
\_\_\_\_\_  
Commission Secretary

Exhibit A: Memorandum of Agreement with the Port of San Francisco.

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“**MOA**”) dated for reference purposes only as of [DATE], is entered into by and between the San Francisco Port Commission (the “**Port**”), and the 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 in its capacity as the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 5 (“**CFD No. 5**” or “**OCII**”), regarding the Mission Bay Parks.

### RECITALS

**A.** The 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, among other things, the development of parks and designate the location of parks in areas zoned for open space. The Redevelopment Plans define “Plan Documents” as implementing documents including without limitation any owner participation agreements, the Mission Bay South Design for Development, the Mission Bay North Design for Development and the Mission Bay Subdivision Ordinance and regulations adopted thereunder. 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 “**Owner**” or “**Master Developer**”) were obligated to develop, among other things, public open space, parks and plazas on the designated open space parcels in the Mission Bay North Project Area and the Mission Bay South Project Area, as shown in Exhibit A (the “**Open Space Parcels**” or the “**Premises**”).

**D.** The Former Agency and the City and County of San Francisco, a municipal corporation and charter city (the “**City**”), entered into that certain Ground Lease dated for reference purposes as of November 16, 2001, as amended (the “**Ground Lease**”), whereby the Former Agency managed and maintained the Open Space Parcels after the Master Developer completed improvements and the City accepted them. Since entering into the Ground Lease, the Former Agency and its successor, OCII, have fulfilled the required maintenance and certain other Ground Lease obligations through a third party, private contractor.

**E.** Under Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq., and Board of Supervisors Ordinance No. 215-12 (Oct. 4, 2012), OCII, as successor to the

Former Agency, has assumed the rights and obligations under the Redevelopment Plans, Plan Documents, and the Ground Lease, subject to certain state requirements to complete and dispose of redevelopment assets in an expeditious fashion.

**F.** The City owns the fee interest in all of the Open Space Parcels and the Master Developer leases the Open Space Parcels that have not yet been completed from the City. In accordance with the Plan Documents, upon completion of the improvements to any particular Open Space Parcel, the improvements are accepted by the City, the lease with the Master Developer is terminated, and the Open Space Parcel is added to the Ground Lease between the City and OCII. The Open Space Parcels that are completed, have been (or will be) accepted by the Port, and comprise the “**Completed Premises**” are more particularly described in Section 3 below and illustrated in Exhibit A.

**G.** Some of the Open Space Parcels are subject to the Burton Act (Chapter 1333 of Statutes 1968, as amended) (the “**Burton Act Lands**”) and are under the jurisdiction of the Port. The remainder of the Open Space Parcels (the “**Non-Burton Act Lands**”) are subject to the public trust for commerce, navigation and fisheries (the “**Public Trust**”). Under this MOA, the Port will be maintaining certain parcels subject to the Burton Act. The Burton Act Lands and the Non-Burton Act Lands are depicted on Exhibit A.

**H.** The Financing Plans to the OPAs required the Former Agency to undertake proceedings to form a community facilities district for the purpose of maintaining in good order, repair and condition, the applicable portions of the Premises and improvements thereon.

**I.** On December 21, 1999, the Former Agency formed, by Resolution No. 217-99 (the “**Resolution of Formation**”), the CFD No. 5 under the Mello-Roos Community Facilities Act of 1982, Gov’t Code § 53311 *et seq.* The Resolution of Formation authorizes funding for services related to the ongoing operation, maintenance and repair of Open Space Parcels, as defined in the OPAs, until fiscal year 2043-44 .

**J.** Under the Resolution of Formation, the maintenance “[c]osts to be funded shall be in amounts and for such purposes as determined by the [Former] Agency, and shall include all personnel or third party costs related to such maintenance, costs of maintaining irrigation systems and other equipment directly related to such maintenance, maintenance or replacement as needed of landscape areas, water features, bathrooms, trash receptacles, park benches, planting containers, picnic tables and other equipment or fixtures installed in areas to be maintained, insurance costs and any other related overhead costs, along with Agency personnel, administrative and overhead costs related to such maintenance and the District or to contracting for and managing third parties in connection with such maintenance or the District, all to the end that Agency or the City will not need to expend their own funds to maintain open space areas . . . so long as the District is in place.” Exhibit A (Description of Services to be Financed by the District) to Resolution No. 217-99 (Dec. 21, 1999).

**K.** Following a special election of qualified electors in CFD No. 5, the CFD No 5 levied a special tax to maintain the Open Space Parcels. CFD No. 5 funds will remain available

to cover park maintenance costs until fiscal year 2043-44. The Financing Plans to the OPAs provide that maintenance costs of the Open Space Parcels shall be payable from the proceeds of the special taxes and not from tax increment.

**L.** Redevelopment Dissolution Law requires OCII to dispose of the Former Agency’s real property interests, including the Ground Lease. The California Department of Finance has approved, under Section 34191.5 of the Health and Safety Code, a long range property management plan (“**PMP**”) for OCII that requires, among other things, OCII to terminate its leasehold interests in the Open Space Parcels, 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. Termination of the Ground Lease will require certain legislative action that will not occur until later in 2023.

**M.** The Ground Lease authorizes OCII to fulfill its maintenance obligations through a contractor providing maintenance service. Currently, OCII has a contract with Parklab Open Space Management (“**POSM**”), which will expire on June 30, 2023. Prior to the termination of the Ground Lease, OCII seeks to enter into this MOA for the purpose of having the City, through RPD or the Port, assume, effective July 1, 2023, the maintenance obligations required under the Ground Lease and currently provided under the POSM contract as to their respective portions of the Completed Premises. (OCII is entering into a similar MOA with RPD.) The parties agree that this MOA is an interim measure and that, upon the future Ground Lease termination, OCII and the City will enter into a new agreement whereby OCII provides CFD No. 5 maintenance funds for the City’s management of the Open Space Parcels.

**N.** The Port manages 7.5 miles of waterfront subject the Public Trust and Burton Act 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.

**O.** The parties now wish to enter into this MOA to allow the Port to operate and maintain the applicable portion of the Completed Premises and P22 park in a coordinated and integrated manner as described in this MOA, subject to the Ground Lease, the Plan Documents, and the Resolution of Formation.

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. MANAGEMENT AND OPERATION OF COMPLETED PREMISES

(a) Management of Completed Premises. Port shall provide comprehensive property management services, including management, landscape, janitorial, general maintenance, and security services, to manage the Port Open Space Parcels (as defined below) for public use and enjoyment, as generally described herein and as described in more detail in Exhibit B, “Mission Bay Open Space Maintenance and Operational Standards” (the “**Maintenance and Operational Standards**”), consistent with the following provisions of the Ground Lease: (i) Section 10.1 [Maintenance and Repair Obligations]; (ii) Section 10.3 [Security]; and (iii) Section 11 [Utilities and Services], with respect to the Completed Premises.

(b) Insurance and Indemnity. OCII shall obtain and maintain the insurance required by Section 16 [Insurance] of the Ground Lease, and shall name City and Port each as additional insureds under such policies. OCII’s indemnity pursuant to Section 19 [Indemnity] of the Ground Lease shall remain in full force and effect.

(c) Maintenance and Operational Standards. Port shall maintain in good order, repair and condition, the Port Open Space Parcels and all improvements thereon, consistent with the requirements of CFD No. 5 and the Plan Documents, including applicable Mission Bay North or South Financing Plans, except where Owner fails to pay the special taxes levied in CFD No. 5. Port agrees that its maintenance and repair obligations under Section 10.1 of the Ground Lease include the obligation to maintain sidewalks on or adjacent to the Port Open Space Parcels.

(d) Quarterly Reports. Port shall provide quarterly reports describing budget to actual expenditures, landscape, janitorial and facilities maintenance activities, property conditions report, special events summary, and other matters reasonably requested by CFD No. 5 (“**Quarterly Reports**”).

(e) Port Open Space Parcels. Commencing upon the start of the Term (as defined below), Port shall provide the services described in this MOA to and on the portions of the Completed Premises described as follows:

(ii) The Port will maintain and operate the following Open Space Parcels (collectively, the “**Port Open Space Parcels**”), which are part of the Completed Premises:

P18 of Bayfront Park  
P21 of Bayfront Park  
P23 of Bayfront Park  
P24 of Bayfront Park

P22 of Bayfront Park upon the earlier of City acceptance or issuance of a license to Port in Fiscal Year 2023-2024.



(f) Modifications to the Maintenance and Operational Standards. Material changes to the Maintenance and Operational Standards shall require the approval of the Successor Agency Commission acting as the governing body for CFD No. 5 (commonly known as the Commission on Community Investment and Infrastructure), and any proposed modification is subject to the availability of funds in CFD No. 5. The Port shall submit a request for modification with supporting documentation, including cost estimates. The Approved Budget may not be exceeded without the approval of the City's Board of Supervisors and the Successor Agency Commission, in each of their sole discretion. The Port and OCII shall employ appropriate practices to track scope amendments, which shall be detailed in the Quarterly Reports.

(g) Operations Plan. A primary objective of this MOA is to ensure the smooth and integrated operation and maintenance of the Completed Premises notwithstanding the separation of jurisdiction and maintenance responsibilities between the Port and RPD. Port staff agree to create an operations and program plan ("**Operations Plan**") for all of the Port Open Space Parcels that complies with the Maintenance and Operational Standards, subject to review and approval by OCII staff as CFD No. 5, and to meet quarterly, or such other period as requested by either Port or RPD, to review and update the Operations Plan as needed. The Operations Plan may include rules and regulations relative to the public's use of the Port Open Space Parcels; provided, however, that such rules and regulations are consistent with Section 7 of the Ground Lease.

(h) OCII Oversight. 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 Open Space Parcels. OCII has the obligation to cause to be operated, maintained and repaired, the Open Space Parcels in good order, condition and repair. For so long as CFD No. 5 exists, OCII will review and approve the Maintenance and Operational Standards and the Operations Plan for the Completed Premises, subject to the availability of CFD No. 5 funds to implement the plan, after deducting its administrative costs. The parties agree to work together in good faith to maximize appropriate funding from CFD No. 5.

(i) Maintenance Responsibility Transfer. Port may transfer to another entity any and all maintenance responsibilities from time to time, with the consent of CFD No. 5 and the Port Commission, and any such transfer shall result in a corresponding change to the Maintenance and Operational Standards and the Approved Budget. Any such transfer shall be in writing, and the Port, in consultation with the Controller and the Mayor's Budget Director, will work with CFD No. 5 to ensure that the CFD No. 5 Funds are divided in accordance with the Approved Budget and Maintenance and Operational Standards.

(j) Coordination Meetings. Port, in consultation with CFD No. 5, shall meet and confer quarterly with representatives of the San Francisco Recreation and Park Department ("RPD"), to coordinate efforts, ensure consistency, and address any maintenance or repair issues. Each department shall designate a contact person for such matters. The initial contact persons are: for RPD, Eric Andersen (eric.andersen@sfgov.org), for Port, Tim Felton (tim.felton@sfport.com), and for CFD No. 5, Marc Slutzkin (marc.slutzkin@sfgov.org)..

(k) City Funding. Port shall each maintain the Port Open Space Parcels consistent with the Plan Documents, CFD No. 5 requirements, the Maintenance and Operational Standards and its Operations Plan, the Approved Budget and subject to available funding. Nothing in this MOA requires the Port to spend funds that have not been appropriated in its annual budget for the Port Open Space Parcels. The Port shall seek budget authorizations and funding to maintain the Port Open Space Parcels consistent with the standards for maintenance set forth in this MOA and as may be agreed to by the Port from time to time; however any final budget decisions are subject to the approval of CFD No. 5, the Mayor, and the Board of Supervisors, each in their sole discretion.

(m) Authority Not Abridged. Nothing in this MOA is intended to limit the authority of OCII under the Redevelopment Plans, the Mission Bay Plan Documents, the Resolution of Formation, and Ground Lease or to limit the Charter authority or regulatory authority of the Port as it relates to the Port Open Space Parcels.

### **3. APPROVED BUDGET**

(a) Approved Budget. The Port will provide the services and produce the deliverables described in the Maintenance and Operational Standards, and in accordance with the attached Exhibit C (the “**Approved Budget**”). The Approved Budget for the period of July 1, 2023 through December 31, 2023 is Five Hundred Ten Thousand Dollars (\$510,000) in total, comprised of projected operating expenses and capital expenses. The Port agrees to submit an invoice to OCII each on the first day of each quarter and, if consistent with the Approved budget and this MOA, OCII agrees to reimburse the Port for services the Port performs in connection with the Port Open Space Parcels so invoiced no later than thirty (30) days after receipt of each invoice from the Port. Unless otherwise agreed to in writing by OCII, the Port agrees and acknowledges that OCII is not obligated to reimburse the Port for any costs or expenses that exceed \$510,000 during the term of this MOA.

(b) Amendment of Approved Budget. The Approved Budget may be amended by the Successor Agency Commission after review and recommendation from the Executive Director, subject to the availability of funds in CFD No. 5. The Approved Budget may not be amended to equal or exceed One Million Dollars (\$1,000,000) without approval of the City’s Board of Supervisors, in its sole discretion.

(c) Supplies. The Port will be responsible for purchasing all supplies for its activities with respect to the Port Open Space Parcels from funds provided in the Approved Budget.

### **4. COMPLIANCE WITH MISSION BAY REDEVELOPMENT PLAN DOCUMENTS**

In assuming operation, maintenance, and repair of the Port Open Space Parcels under this MOA, the Port agrees to comply with:

(a) Ground Lease. Section 10 (Security, Maintenance and Repairs), Section 11 (Utilities and Services), and Section 12 (Improvements) of the Ground Lease.

(b) CFD No. 5. All requirements of CFD No. 5 as they relate to the eligible use of CFD funds to operate, maintain, and repair the Port Open Space Parcels as authorized by this MOA.

(c) RMP. The Risk Management Plan for the Mission Bay Area (“**RMP**”) as the RMP applies to parcels on which construction of improvements is complete, including but not limited to Sections 6.4.3, 5.3.5 and Appendix C of the RMP, attached as Exhibit D, Mission Bay Risk Management Plan. The City will not interfere with the OCII’s compliance with the RMP in its activities under this MOA, and any other activities that may disturb soil or groundwater.

(d) Park Rules. The Ground Lease, at Section 7.4, provides that OCII may apply provisions of the City Park Code and Port Park Code (the “**Park Codes**”), subject to certain conditions ensuring that the Park Codes shall not adversely affect certain rights under Redevelopment Plan Documents, and OCII will so apply the Park Codes concurrently with the Successor Agency Commission’s approval of this MOA. Subject to compliance with Section 7 [Use of the Premises] of the Ground Lease, the parties agree that the Port Open Space Parcels 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 Park Codes and other applicable laws, as amended from time to time.

## 5. PUBLIC TRUST, AND RESTRICTIONS

(a) BCDC Permit. The Port shall ensure that the Port Open Space Parcels will be used and maintained in accordance with applicable recorded restrictions and certain regulatory requirements imposed by the San Francisco Bay Conservation and Development Commission (“**BCDC**”) under Permit No. 2000.005.006, dated October 11, 2016, as amended.

(b) Public Trust Requirements. The Open Space Parcels are subject to the requirements of the Mission Bay Exchange Act (Stats 1991 ch 1143; Stats 1997 ch 203). The Burton Act Lands are subject to the requirements of the Burton Act (Chapter 1333, Statutes of 1968), and the Non-Burton Act Lands are subject to the requirements of the California Public Resources Code section 6303, et seq., each as amended from time to time. The Port agrees to provide any required documents and reports to its regulatory agencies for Port Open Space Parcels. While the Port anticipates the cost of operating and maintaining the Burton Act Lands and the Non-Burton Act Trust Lands will significantly exceed any revenues received from these lands, the Port agrees 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 shall be expended only for those uses and purposes consistent with the public trust for commerce, navigation, and fisheries, and the applicable statutory grant.
- All funds received or generated from trust lands or trust assets shall be segregated in separate accounts from nontrust received or generated funds.
- To the extent required by an applicable statutory grant, on or before December 31 of each year, each trustee of public trust lands shall file with the State Lands Commission a detailed statement of all revenues and expenditures relating to its trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement.
- The statement shall be prepared in accordance with generally accepted accounting principles, and will conform to any standardized reporting form developed by the State Lands Commission.

## **6. EFFECTIVE DATE**

The “**Effective Date**” of this MOA shall be when fully executed, and approved by the Successor Agency Commission and the Port Commission, but shall be no earlier than July 1, 2023.

## **7. TERM.**

The “**Term**” of this MOA shall begin on the Effective Date and continue until such time as OCII may transfer (under Section 20.4 of the Ground Lease) the Port Open Space Parcels to the City, acting through the Port, as successor to OCII (which transfer shall be subject to all required approvals including by the Board of Supervisors) but in no event longer than two (2) years after the Effective Date. Either party may terminate this MOA by providing not less than 180 days’ notice to the other party. Any termination must be in writing, and any termination initiated by the Port will be subject to the prior approval of the Port Commission.

## **8. CONTROLLER CERTIFICATION OF FUNDS**

Nothing in this MOA requires a City department 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. This MOA is subject to the budgetary and fiscal provisions of City’s Charter. Notwithstanding anything to the contrary contained in this MOA, 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.

## 9. SIGNAGE

The Port as required will create and implement a signage program, so that the Port Open Space Parcels all share consistent regulation signs and policies regarding signs that are permitted and prohibited and that are consistent with Mission Bay North and South Signage Plans. So long as the Redevelopment Plans are in effect, the signage plan will be subject to the approval of OCII.

## 10. RESTRICTIONS ON USE; COMPLIANCE WITHLAW

(a) The Port will not use or permit the Port Open Space Parcels to be used in a manner that violates this MOA, the Ground Lease, the Redevelopment Plans and Plan-Documents, or that would materially interfere with the primary purposes of public access to the Port Open Space Parcels. Each City department acting as a trustee of the public trust for the Burton Act Trust Lands or the Non-Burton Act Lands will have the right to veto any use of the affected property that it determines is not consistent with the public trust or the requirements of any regulatory permit or approval.

(b) Except as otherwise described in the Operations Plan or this MOA, the Port will not, without the prior consent of OCII staff: (i) allow overnight stays at the Port Open Space Parcels; or (ii) conduct or allow activities that would prevent or materially impede public access to the Port Open Space Parcels.

(c) The Port will promptly notify OCII and the other if there has been a release of any hazardous materials in or around the Port Open Space Parcels. The Port will cooperate, with the City Attorney and OCII, in any action against the party responsible for the release.

## 11. NOTICE

Any notice given under this MOA 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) 274-0501  
Fax No: (415) 274-0578

Address for OCII:

Thor Kaslofsky  
Executive Director  
1 South Van Ness Ave., 5<sup>th</sup> Floor

San Francisco, CA 94103  
Telephone No: (415) 749-2588  
Fax No: (415) 749-2585  
Email: thor.kaslofsky@sfgov.org

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, facsimile 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. 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 Premises.

## **13. ENTIRE AGREEMENT**

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

## **14. Exclusive Benefit of Parties**

The provisions of this MOA 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 MOA shall not be deemed to have conferred any rights upon any person except the signatories to this MOA.

## **15. APPROVALS**

All approvals under this MOA and any agreements contemplated hereby may be given by the Port Executive Director or her designees, except as otherwise specified herein or in the City Charter or the City's Municipal Code.

## **16. AMENDMENTS**

This MOA may be amended only by a signed writing of OCII and the Port. The Port Executive Director, in consultation with the City Attorney, may execute written amendments on behalf of the Port, provided the amendments do not materially increase the obligations or liabilities of the Port, further the purposes of this MOA, and are in compliance with all applicable laws.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this MOA 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

By: \_\_\_\_\_  
Elaine Forbes  
Executive Director  
Port of San Francisco

Date Signed: \_\_\_\_\_

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: \_\_\_\_\_

Approved as to form:  
**DAVID CHIU, City Attorney**

Approved as to form:  
James B. Morales  
Successor Agency General Counsel

By: \_\_\_\_\_  
Michelle W. Sexton  
Deputy City Attorney

\_\_\_\_\_



Recreation and Park Commission Resolution No. \_\_\_\_\_

Port Commission Resolution No. \_\_\_\_\_

Commission on Community Infrastructure  
and Investment Resolution No. \_\_\_\_\_

**EXHIBIT A**  
**COMPLETED PREMISES**

**EXHIBIT B**

**MAINTENANCE AND OPERATIONAL STANDARDS**

[Attachment on following page]

**EXHIBIT C**  
**APPROVED BUDGET**

**EXHIBIT D**

**MISSION BAY RISK MANAGEMENT PLAN**