



126-0052023-002

Agenda Item **Nos. 5 (b-c)**
Meeting of June 6, 2023

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Authorizing a Memorandum of Agreement with the City and County of San Francisco, acting through its Recreation and Parks Department, 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 \$950,000 for a Six-Month Budget consistent with the Approved Budget for Community Facilities District No. 5; Mission Bay North and South Redevelopment Project Areas

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 Areas

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EXECUTIVE SUMMARY

Under the 1998 Mission Bay North and South Owner Participation Agreements (“OPAs”), FOCIL-MB, LLC (“FOCIL” or “Mission Bay Master Developer”) is responsible for constructing public park, plaza, and open space improvements in Mission Bay (“Open Space”) on land that the Mission Bay Master Developer previously owned and that ultimately was conveyed to the City and County of San Francisco (“City”). Also in 1998, Redevelopment Plans for the Mission Bay South and Mission Bay North Project Areas were adopted to, among other things, govern land uses in the Project Areas. (“Redevelopment Plans”). The Redevelopment Agency of the City and County of San Francisco (“Former Agency”) and now its successor, the Office of Community Investment and Infrastructure (“OCII”), has the responsibility to 1) reimburse the Mission Bay Master

Developer for the costs of construction and 2) administer obligations of Redevelopment Agency Community Facilities District No. 5 to manage and pay for the cost of maintenance of the Open Space, which will total 41.5 acres upon completion. To fulfill its property management responsibility, the Former Agency entered into a long-term Ground Lease ("Agency Lease") with the City whereby the Former Agency agreed to maintain the Open Space with funding from special tax assessments levied on Mission Bay property owners and authorized under the Mello-Roos Community Facilities District No. 5 ("CFD No. 5"). To date 24.2 acres of Open Space have been developed and opened to the public. Ten parks in the Open Space totaling 17.3 acres remain to be built.

The implementation of the Redevelopment Dissolution Law established OCII as the Successor Agency to the Former Agency and required it to dispose of the Former Agency's real property interests. In December 2015, the California Department of Finance ("DOF") approved OCII's Long Range Property Management Plan ("PMP") that the Oversight Board had approved by Resolution No. 14-2015 (Nov. 23, 2015) and that provided for, among other things, a transfer of property management responsibilities to the City through an early termination of the Agency Lease of the Open Space upon completion of certain phases.

Over the past several years, OCII has worked with the City's Real Estate Division ("RED"), Recreation and Parks Department ("RPD"), the Port of San Francisco ("Port") and Department of Public Works ("Public Works") on a plan for the transfer of maintenance responsibility of the Open Space. The proposed strategy includes an interim transfer of Open Space responsibilities under the Agency Lease to the City in June 2023, to coincide with the expiration of the existing Open Space maintenance contractor, and then a permanent transfer to the City at the end of 2023. The permanent transfer of Open Space responsibilities will require the Board of Supervisors ("BOS") to vacate public right of ways associated with the Open Space and to approve related actions for the transfer of jurisdiction to RPD. OCII will remain the administrator of the CFD No. 5 funds until the CFD terminates at the end of fiscal year 2043-44.

The timeline for this process is as follows:

July 2023

- Transfer maintenance responsibility of the Open Space to RPD and the Port under separate Memorandums of Agreement ("MOA").
- Terminating the current Open Space maintenance contract with Parklab Open Space Management ("POSM"), which expires at the end of June 2023.

December 2023

- Completing public right of way vacations and terminating Agency Lease of the Open Space.
- Entering into long-term maintenance agreements of the Open Space with RPD and the Port.

On June 21, 2022, the OCII Commission approved, by Resolution No. 17-2022, a one-year Open Space maintenance contract with POSM to provide OCII and the City time to finalize a transition of management to the City. Upon termination of the POSM contract, the plan is to have RPD and the Port manage their portions of the Mission Bay Open Space for an interim period and then seek permanent transfer and approval from the Commission and then. To achieve this, OCII staff has negotiated two MOAs, one with RPD and one with the Port, to manage their respective Open Space parcels for no more than a year under budgets of no more than \$1 million for this interim period.

BACKGROUND

Mission Bay Open Space System

In November 1998, the Former Agency and the Mission Bay Master Developer entered into the OPAs authorizing a mixed-use, mixed-income transit-oriented development on 302 acres of land. Under the OPAs, the Mission Bay Master Developer is required, among other things, to develop Open Space on land that it conveyed to the City as part of the Land Transfer Agreements (described below) or on Port land, which the City, including the Port, in turn leased to the Former Agency for Open Space maintenance purposes.

The Land Transfer Agreements between the Mission Bay Master Developer, RED and the Port, were executed in 1998 and include:

- Amended and Restated Mission Bay City Land Transfer Agreement (“CLTA”).
- Amended and Restated Mission Bay Port Land Transfer Agreement (“PLTA”).
- Amended and Restated Agreement Concerning the Public Trust. Includes the State of California as a party. (“Public Trust Agreement”).

Together, the OPAs, the CLTA and the PLTA require the City and the Port to lease approximately 41.5 acres of City and Port-owned land designated as Open Space in the Redevelopment Plans to the Former Agency. After the Mission Bay Master Developer completes and transfers the Open Space improvements to the City, OCII is then required to lease the completed Open Space improvements from the City and to maintain them using funds generated from CFD No. 5.

The Agency Lease for the Open Space terminates in 2046 and currently covers the following 18 parks P1, NP1-5, P5, P6, P10, P11/11A, P16-18, P21, P23, P24 and P26 (“the Completed Parcels”). The OPAs and Agency Lease require OCII to add Future Open Space to the leasehold after the City and the OCII have received the Mission Bay Master Developer’s notice that the Open Space has been completed and the City accepts the improvements.

Over 24 acres of Open Space have been completed in Mission Bay and are managed by OCII through its contract with POSM. The Open Space that is open to the public and managed by OCII under the Agency Lease include:

- Portions of Mission Creek Park, including the sports courts (parks P1 and NP1-NP5).
- Four parks along Terry François Boulevard (parks P18, P21, P23 and P24).
- The first two segments of the Mission Bay Commons Park (parks P16 and P17).
- Mariposa Park adjacent to the USCF Hospital (P26).
- Kids Park (P6).
- Dog Park (P5).
- Parks P10 and P11/11A.
- Small Open Space parcels at the western edge of Mission Bay Drive.

In FY 2023-24, Park P22, which is a 5.4 acre park along the San Francisco Bay, located just east of Chase Center, will be opened to the public and added to the Open Space for which OCII will have funding responsibility under CFD No. 5. Attachment 1, the Mission Bay Open Space System Map, depicts Open Space that has been completed and opened to the public, Open Space under construction, and Open Space yet to be built.

Mission Bay Open Space (completed and future)

Park/Open Space	Approximate Acreage
Complete	
Mission Bay North	
• NP1, NP2, NP3, NP4 & NP5	6.52
Mission Bay South	
• P1, P3, P5, P6, P10, P11/11a, P16, P17, P18, P21, P23/24 & P26	17.76
Future	
Mission Bay South (FY 23-24)	
• P22	5.4
Mission Bay South	
• P2, P7, P8, P9, P12, P13, P15, P19 & P27	11.86
Grand Total	41.54

Long Range Property Management Plan

Redevelopment Dissolution Law requires OCII to dispose of the Former Agency's real property interests under the DOF-approved PMP. The PMP was drafted with input from various parties, including the Mission Bay Citizens Advisory Committee ("MBCAC"), the Mission Bay community and the Commission. Under Redevelopment Dissolution Law, the Oversight Board had final authority over the PMP subject to DOF review. The Oversight Board approved the PMP, by Resolution Nos. 12-2013 and 14-2015, and on December 7, 2015 the DOF finally and conclusively approved the PMP, which established the transfer for Open Space under the Agency Lease, and allows OCII to fulfill its maintenance obligations under the Agency Lease until terminated.

Current Open Space System Management

On June 21, 2022, the OCII Commission approved, by Resolution No. 17-2022, a Personal Services Contract ("Contract") with POSM to provide overall management of the Mission Bay Open Space. The term of the Contract was for one year in anticipation of the City's assumption of maintenance obligations on June 30, 2023. OCII awarded the Contract as a sole source procurement due to the limited one-year term and deep experience in Mission Bay of POSM's staff who had been with the prior Mission Bay open space management company, MJM.

Funding for Open Space Management

In December 1999, as required by the OPA, the Former Agency formed, by Resolution No. 217-99, CFD No. 5 to collect special taxes for the purpose of operating, maintaining, and repairing the Open Space for 45 years until FY 2043-44. All funding for maintenance of the Open Space is derived from special taxes paid by Mission Bay property owners, including UCSF, but excluding affordable housing sites. OCII is the administrator of CFD No. 5 and annually adjusts the level of special taxes collected from CFD No. 5 according to the formula articulated in the Commission-approved Rate and Method of Apportionment. OCII will continue as the CFD administrator and funder of the maintenance of the Mission Bay Open Space until the CFD terminates at the end of fiscal year 2043-44.

When CFD No. 5 was established in 1999, the annual assessment was based on cost estimates to maintain the Open Space for 45 years. However, the actual costs to maintain the Open Space have exceeded the annual CFD No. 5 increases that are the lesser of CPI or 5.5%. Furthermore, City wide enjoyment of the Open Space, and therefore wear on the Open Space, has been greater than anticipated, resulting in greater maintenance costs. Since the Open Space system is not fully built out, the annual assessments have been sufficient to cover operating costs and any excess funds have been set aside to cover future shortfalls. For FY 23-24, the annual assessment will not be sufficient to fund all projected costs, so previous years' excess funds will be used to offset the shortfall. As more parks are built, future shortfalls will continue for the life of CFD No. 5. The excess funds are projected to cover any shortfalls for the next five years, after which the City will manage the funding needs.

DISCUSSION

The state-approved PMP proposed an early transfer of the Agency Lease obligations to the City in three calendar-year phases (2017, 2019, and 2022). The Agency Lease provides for a transfer of OCII's interests to the City as successor so long as the transfer does not adversely affect certain specified development interests of the Mission Bay Master Developer.¹ To date OCII has not transferred any portion of the Agency Lease obligations due to the complexities of the negotiations of having the City assume jurisdiction over new parks and construction and other administrative issues. Over the past two years, OCII has worked with RED, RPD, the Port and Public Works to finalize the Open Space transfers and now is prepared to begin with the Open Space maintenance obligation transfer.

RPD and The Port

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

¹ A transfer of Agency Lease interests to the City as the successor to OCII is permitted where "such transfer does not (a) preclude or materially increase the cost of compliance with the Redevelopment Plans or the applicable Plan Documents; (b) do any of the following: (i) affect the rights or obligations of Owner under the applicable Plan Documents, (ii) alter the permitted use, (iii) decrease the height of any building, (iv) delay development, or (v) reduce the density or intensity of development contemplated under the applicable Plan Documents; or (iv) otherwise take any action inconsistent with the North ICA or South ICA, as applicable." Ground Lease, Section 20.4 at p. 22.

The Port manages 7.5 miles of waterfront subject to 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 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.

Mission Bay Open Space Memorandum of Agreement

The current contract with POSM for Open Space management expires on June 30, 2023. OCII staff has worked with RPD and the Port to create separate MOAs for maintenance of their respective Open Space areas for the interim period between July 1, 2023 and the date of a future transfer of Ground Lease responsibilities to the City and related actions are completed. The major terms of the proposed MOAs are outlined below.

Term

The Term of the MOAs shall continue until such time as OCII may transfer (under Section 20.4 of the Ground Lease) the RPD and Port Open Space Parcels to the City, acting through RPD and 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. The MOAs may be terminated earlier by providing not less than 180 days' notice to the other party.

Budget

While the term for the MOAs do not have a specific end date, the proposed budgets are for only 6 months. RPD's 6-month budget is \$950,000, which is slightly less than half RPD's \$2,350,000 annual budget. This is due to certain expenses, including capital expenses, not occurring until later in the budget year. The Port's 6-month budget is \$510,000 which is approximately half of its \$1,000,774 annual budget. Both the PRD and the Port annual budgets are part of the FY 23-24 CFD No. 5 budget recently approved by the Commission by Resolution No. 12-2023. OCII will reimburse RPD and Port costs in arrears using CFD No. 5 funds through a review and approval process described in the MOAs. CFD No. 5 funds will not be used for any other park system within the larger RPD and Port portfolios. Future CFD No. 5 budgets will continue to be reviewed and approved by the Commission until the CFD terminates at the end of fiscal year 2043-44.

If the completion of the transfer of the Ground Lease does not occur within 6 months, staff will return to the Commission for approval of budget increases through June 30, 2024 that match the amount approved by Commission by Resolution No. 12-2023. RPD and the Port will go before the Board of Supervisors for budget approval.

Port and RPD Jurisdiction

Attachment 2 is a map indicating the Open Spaces the Port will manage, and Attachment 3 is a map indicating the Open Spaces RPD will manage, see the summary below:

The Port will be responsible for:

- P18, P21, P22 (once completed), P23 and P24.

RPD will be responsible for:

- NP1-NP5, P1 and P3 of Mission Creek Park, P16 and P17 of Mission Bay Commons, P5, P6 Kids Park, P10, P11/11a and P26 of Mariposa Park.

Scope of Services

RPD and the Port's responsibilities are similar to the service levels provided previously by POSM and will include overall management of the parks, landscape gardening, janitorial and general maintenance, security and events permitting/reservations. The MOAs have detailed scopes of services and include the following:

- Management and General Operations: Oversight of Mission Bay Open Space operations, including tasks such as coordinating and supervising all landscaping, janitorial, maintenance, and security services; providing an on-site property manager; maintaining all mechanical and constructed systems; coordinating and promoting special events; issuing permits for use of facilities; and providing customer service and resolving day-to-day issues as they arise.
- Landscape Maintenance: Maintenance of all landscaped and planted areas including lawn areas, trees, shrubs, plantings, and ground cover, in a healthy, attractive, and safe condition.
- Janitorial: Trash removal, sweeping, and janitorial services, as well as graffiti abatement and general maintenance services for all hardscape and constructed areas, including pathways, and all site furnishings, as well as of park structures.
- Security: A combination of onsite and roving security will be provided. Additional security may be provided as needed for special events.
- Event Permitting/Reservations: RPD has incorporated the Mission Bay Open Space into its existing permitting/reservations system. The Port has a permitting/reservations program for medium to large size events and is currently working on a reservation system for smaller events which they plan to implement by the end of the year.

To monitor the work performed, the Port and RPD will be required to submit quarterly reports to OCII detailing expenditures, maintenance activities and permitting revenue in the parks. In addition to the scope of services and quarterly reporting that will be part of the MOAs, for RPD, Section F1.102 of the City Charter requires the City Controller to conduct annual audits of the City's park maintenance and cleaning obligations.

Audit scores can be found at:

<https://sfgov.maps.arcgis.com/apps/MapSeries/index.html?appid=04937b03318a44ae81d90c240de4e3d1>

Section F1.102 of the City Charter

https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-4222

CITIZENS ADVISORY COMMITTEE

During the community review process, concerns and questions were raised regarding the Open Space transfer, and whether the current standard of Open Space maintenance provided by POSM will continue to be met by RPD and the Port. To address these topics and concerns in the community, OCII, RPD and the Port have undertaken an operations planning and preparation process as well as engaging in robust community outreach.

OCII, RPD and the Port met with subgroups of the MBCAC and with the MBCAC as a whole to have discussions on these matters. OCII, RPD and Port staff presented at eight previous MBCAC meetings over the course of January 2022 through May 2023 regarding the transfer. In addition to these meetings, a smaller subcommittee met three times from January to March 2022 with OCII, RPD and Port staff, and subsequently reported out to the larger MBCAC. This subcommittee investigated and determined to be infeasible, the possibility of creating a non-profit to manage the Open Spaces similar to the conservancy at Yerba Buena Gardens.

In preparation of the transfer, both RPD and the Port have; conducted due diligence, met regularly with current POSM staff to obtain a working knowledge of the Open Space operation. RPD and the Port have also conducted forward planning using best practices developed over decades of experience managing their respective existing large, medium, and small scale parks in San Francisco. Lastly, the Port and RPD have approved staffing levels for management, landscaping and janitorial that meet or exceed the level of service provided by POSM. Ultimately the MBCAC voted in favor of recommending the MOAs to the Commission for approval on April 13, 2023.

SMALL BUSINESS ENTERPRISE PROGRAM COMPLIANCE

The City and the Port are creating and filling union positions within their respective agencies to staff the Mission Bay Open Space portfolio. If any outside contracting is utilized in the future, both entities will adhere to their respective City public contracting and workforce goals and requirements.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

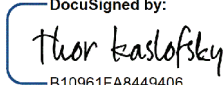
Approval of the MOAs are categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 and 15304 because it authorizes the operation, repair, maintenance or minor alteration of existing open space facilities or features with negligible or no expansion of existing uses and minor alterations to land.

NEXT STEPS

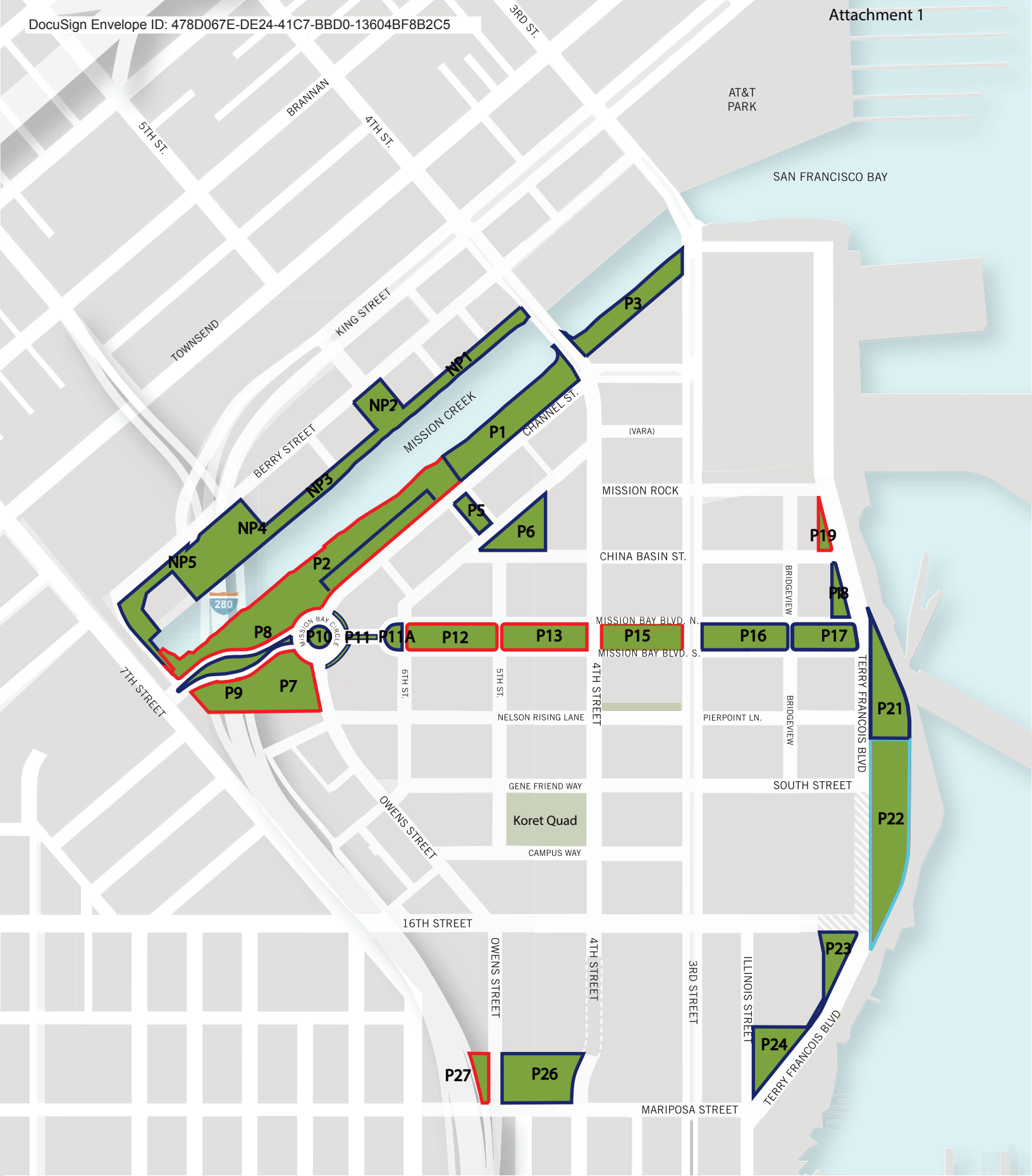
RPD and the Port will continue to work closely with OCII staff and POSM for an orderly transition of the management of the Open Space in July 1, 2023. Staff will work with POSM during Q3 of 2023 to close out the accounting.

Staff will continue to work with RPD, the Port, Public Works, the MBCAC, and community to facilitate the Open Space transition. OCII staff will continue to work with the City on the necessary legislative and legal actions needed to remove the public right of ways designation and transfer the Ground Lease obligations. During the continued wind-down, OCII will remain the administrator of CFD No.5 through FY 2043-44 (2044 is when the CFD sunsets). Also, OCII will remain the design, programming and permitting lead in working with FOCIL-MB to build the remaining parks. Future park designs will be brought to both the MBCAC and the Commission for review and approval.

(Originated by Marc Slutzkin, Project Manager and Gretchen Heckman, Development Specialist)

DocuSigned by:

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Thor Kaslofsky
Executive Director

Attachment 1:	Mission Bay Open Space System Map
Attachment 2:	Mission Bay Open Space to be managed by RPD Map
Attachment 3:	Mission Bay Open Space to be managed by the Port Map



- Construction Started
- Complete
- Future

MISSION BAY OPEN SPACE STATUS

April 2023





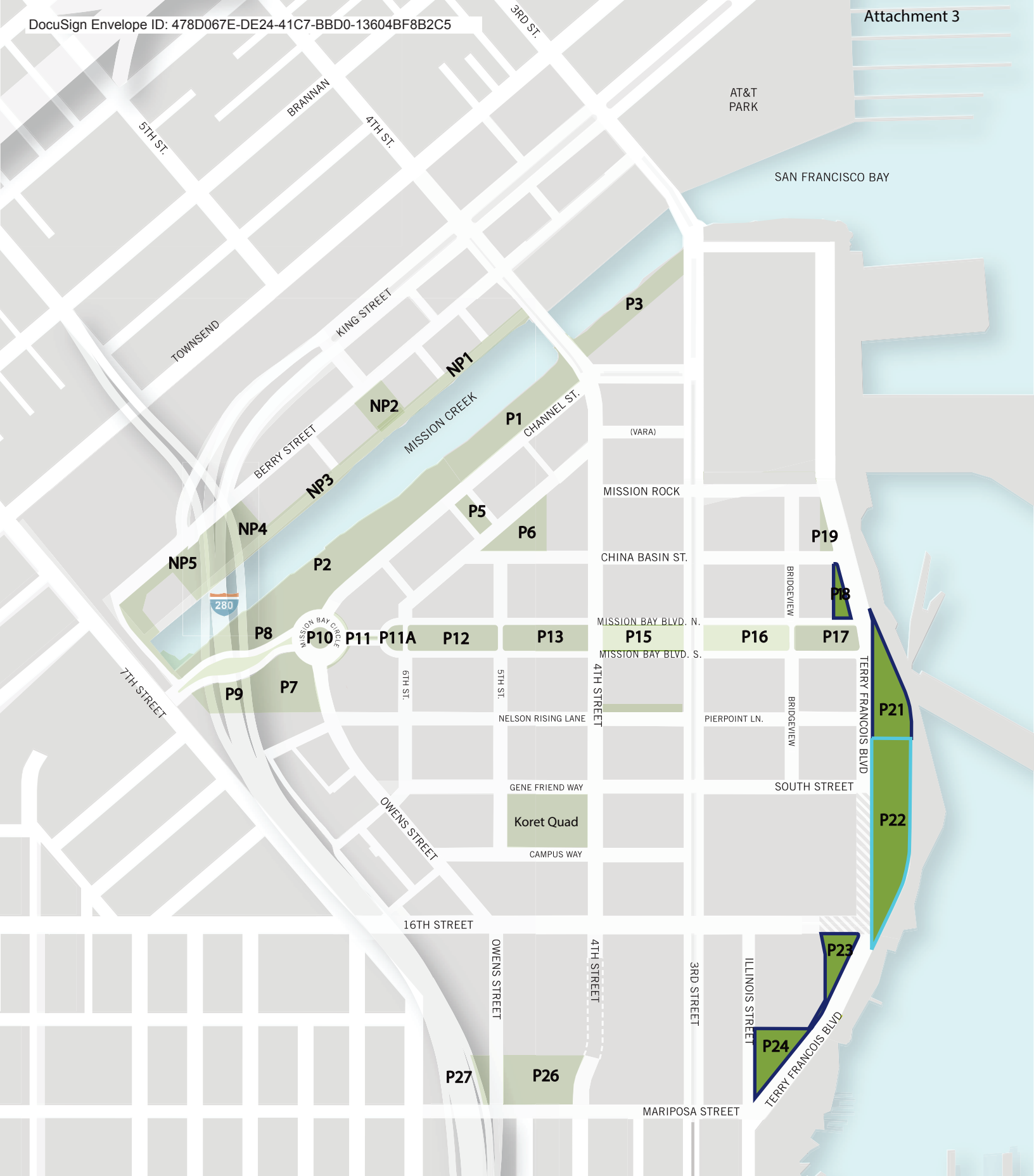
 Complete

 RPD Maintained

MISSION BAY OPEN SPACE MOA RPD

April 2023





 Under Construction
 Complete

 Port Maintained

MISSION BAY OPEN SPACE MOA PORT

April 2023



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100 400