



MEMORANDUM

February 7, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of Memorandum of Understanding No. 13773 with the City's Recreation and Park Department for rent-free use of a Port property consisting of a dock, beach area and submerged lands located at 500 Jefferson Street at the foot of Hyde Street in Aquatic Park.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

EXECUTIVE SUMMARY

In 1979, the San Francisco Recreation and Park Department ("SFRPD") entered into a lease for SFRPD property located at 500 Jefferson Street with the South End Rowing Club ("SERC") which includes the SERC clubhouse, dock and beach space.

In 1993, Port and SFRPD discovered through a non-related jurisdictional review that the bayward end portion of the SERC dock extends into the Port's jurisdiction and the Port entered a lease with SERC that called for base and percentage rental payments and required improvements to the dock to maintain it as a recreational asset.

Due to regulatory demands, the cost of the improvements increased to more than double the projected cost and due the limits of its dues-funded financial structure, SERC was unable to make payments of rent payments. The Port has entered into a Settlement Agreement with SERC approved by the Port Commission at its December 11, 2018 meeting which resolves all remaining payment obligations from

This Print Covers Calendar Item No. 12A

SERC to the Port. The effectiveness of the settlement is subject to an agreement between the Port and SFRPD to allow for SERC's continued use of Port property. The subject MOU is that agreement.

As more fully described below, SFRPD and Port staff has negotiated an MOU that allows SFRPD to sublease the Port lands to SERC for recreational purposes, in return for RPD taking over all maintenance and liability responsibility. RPD is also the landlord for the remainder of the SERC premises, so this MOU would allow RPD to then lease the combined Port-SFRPD premises to SERC in one new comprehensive long term lease agreement for a cleaner and more cohesive landlord-tenant relationship. In addition to combining the premises, the MOU provides code required secondary access from the RPD property across Port lands. Port staff has completed negotiations of the MOU and is requesting approval of the MOU as further described in the attached resolution.

BACKGROUND

The South End Rowing Club, founded May 5, 1873, is the oldest rowing club west of the Mississippi. SERC's clubhouse building was originally located at the foot of Third Street and was moved by barge to Aquatic Park in 1908, and has been at its current location at 500 Jefferson Street since 1938. RPD has jurisdiction over the land on which the SERC clubhouse building and a portion of the dock and beach adjacent to Port property. The Port/City jurisdictional line bisects the dock and Port has jurisdiction over the bayward portion of the dock, beach and submerged lands. The jurisdictional lines are depicted on the attached Exhibit A.

The Club is operated on a non-profit basis and provides facilities serving the public interest in rowing, swimming and other sports that benefit its members and general public. The South End Rowing Club is open to the public three days a week from 10am to 6pm. Members in good standing may bring up to two guests to the club at any time. There is a day-use fee of \$10 for the general public.

SERC's lease with SFRPD commenced on July 1, 1979 and will expire on June 30, 2028. In 2016, SERC completed an extensive renovation to its facility and SERC and SFRPD now seek to establish a new lease to refine the terms of the use of the renovated facility and to extend their relationship past 2028.

At its September 20, 2018 meeting, by its Resolution No. 1809-009, the Recreation and Park Commission approved a Memorandum of Understanding with the Port on the terms described below. At that same meeting, by its Resolution No. 1809-008, the Recreation and Park Commission also recommended that the Board of Supervisors approve a new lease with SERC for up to a forty-nine (49) year term that incorporates the Port premises into the lease as described above. SFRPD staff advises that their plan is to introduce the SERC lease for consideration at the Board of Supervisors in March, with final approval anticipated in April. Port staff is actively working on a more

defined schedule with RPD to ensure timely Board approval. The Port/SERC Lease will terminate upon the effective date of the new SERC/SFRPD Lease

STRATEGIC PLAN

- *Evolution - Transform the waterfront to respond to changing public and Port needs. Under #3: Improve Port open spaces to provide publicly desired amenities and activities.*

At no cost to Port, the public use of the dock, beach and submerged lands allows the Port to continue its mission of promoting and enlivening the waterfront's benefits and amenities to the general public.

- *Engagement – Increase the public's awareness of the purpose and benefits of Port functions and activities. Under #2: Partner with City departments and government agencies, Port tenants and stakeholders to educate and promote waterfront projects, activities and special events at least four times a year.*

The MOU with RPD allows the continuation of use with the South End Rowing Club who organizes and hosts many public events such as the Alcatraz Invitational swim. The Club is open to the public for a modest day use fee.

Terms of the Memorandum of Understanding

The proposed Port-SFRPD MOU includes the following terms:

1. The term of the MOU is concurrent with the RPD forty-nine (49) year lease. RPD has the right to terminate the MOU if the SERC lease is terminated.
2. The MOU premises consist approximately of 2,061 square feet of dock space, 3,248 square feet of beach area and the surrounding 8,380 square feet of submerged lands within Port's jurisdiction near the intersection of Hyde Street and Jefferson Street as shown in the attached Exhibit A.
3. In lieu of paying a use fee and as a material consideration for the Port entering into this MOU, SFRPD shall ensure that the Premises are available for public use on the days the Clubhouse is open to the public under the terms of the SFRPD lease with SERC. In addition, the MOU grants RPD and its subtenants secondary access between the RPD property and Port property as required under the San Francisco Building Code at no cost.
4. SFRPD has the right and is planning to sublease the Port lands to SERC for its use and the provision of public access to the waters of San Francisco Bay and for incidental directly related uses and for no other purpose.
5. The parties acknowledge that the Port does not and is not required to provide

maintenance, repairs or security for the Premises. SFRPD will be strictly responsible for the security, maintenance and repair of the Premises, including without limitation any improvements that SFRPD might choose to make to the Premises and for any repairs to the Premises that might be necessitated by SFRPD's or SERC's use of the Premises. At the expiration or termination of the MOU, SFRPD shall surrender the Premises to Port in at least as good condition as when received (other than normal wear and tear) and shall repair any damage to the Premises.

6. SFRPD shall require each Clubhouse tenant and licensee and any agent, contractor or subcontractor using the Port premises or access area to protect Port from liability and to obtain adequate insurance coverage.
7. RPD prepared a Declaration of Restrictions that was recorded on April 8, 2016, (the "2016 Declaration") for the benefit of City's Department of Building Inspection and the San Francisco Fire Marshal to ensure a path of safe access from the SERC clubhouse building across immediately adjacent Port lands so the building would satisfy San Francisco Building Code requirements. The 2016 Declaration will be updated and replaced with a restated declaration reflecting the terms of the MOU and new SERC/RPD lease. The restated declaration is consistent with the terms of the Port license with the National Park Service allowing the National Park Service to use the space that is needed for safe egress.
8. The MOU provides Port's consent to the anticipated sublease between SFRPD and SERC, subject to all of the terms and conditions of the MOU, including without limitation the disclosures, insurance provisions and waiver of claims. If SFRPD wishes to sublease the Premises to any other party, it must first obtain Port's written consent, which shall not be unreasonably withheld. Port also consents to all licenses for secondary access granted by SFRPD to Clubhouse tenants and licensees subject to all of the terms and conditions of the MOU, provided SFRPD shall notify Port in writing of each license it grants to any Clubhouse tenant or licensee.

Staff believes that the MOU terms will give effect to the Settlement Agreement approved on December 11, 2018 and will protect the Port's interest in maintaining its property while limiting the Port's potential liability for the life of the MOU. The MOU allows for a cohesive approach for continued public access to Port property for maritime and recreational use on the Bay.

RECOMMENDATION

For the reasons set forth above, Port staff recommends that the Port Commission approve the attached Resolution and authorize the Executive Director to execute the Memorandum of Understanding No. M-13773 between the Port of San Francisco and the San Francisco Recreation and Park Department for the premises and terms described herein.

Prepared by: Jay Edwards
Senior Property Manager

Vicky Lee
Property Manager

For: Michael Martin, Deputy Director
Real Estate and Development

Attachments:

- A. Location map
- B. Memorandum of Understanding between the Port and the San Francisco Recreation and Park Department

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 19-06**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, since 1979, the San Francisco Recreation and Park Department (“SFRPD”) has leased the club house building, launching dock and beach area and submerged lands located at 500 Jefferson Street to the South End Rowing Club; and
- WHEREAS, in 1993, staff of the Port and SFRPD determined that a portion of the dock, the beach area surrounding the dock and the submerged land used by the South End Rowing Club is within the Port’s jurisdiction. After this discovery, Port and the South End Rowing Club entered into lease L-11843; and
- WHEREAS, in September 2018 the Recreation and Park Commission authorized the Memorandum of Understanding with the Port and authorized a new lease with the South End Rowing Club, subject to approval of the Memorandum of Understanding by the Port and approval of the lease by the Board of Supervisors; and
- WHEREAS, at its meeting on January 8, 2019 the Port Commission approved a settlement agreement with the South End Rowing Club that addressed all outstanding rent under the lease where SERC paid Port back rent owed, Port waived late charges and allocated credit for improvements to the leased premises, The effectiveness of the Settlement Agreement is conditioned on the agreement to and execution of a Memorandum of Understanding between the Port and SFRPD on the terms and conditions memorialized in MOU No. M-13773 on file with the Port Commission Secretary and summarized in the Memorandum dated January 18, 2019; and
- WHEREAS, the permitted uses in the Memorandum of Understanding are a continuation of the existing uses and are therefore a not a project pursuant to the California Environmental Quality Act; now therefore be it;
- RESOLVED, that the Port Commission hereby approves MOU No. M-13773 with SFRPD and authorizes the Executive Director or her designee to execute the MOU and all other appropriate documentation that in consultation with the City Attorney, she determines necessary or appropriate to implement this Resolution, in such form as approved by the City Attorney’s office, such determination to be conclusively

evidenced by the execution and delivery by the Executive Director, or her designee, of such documents, and be it further

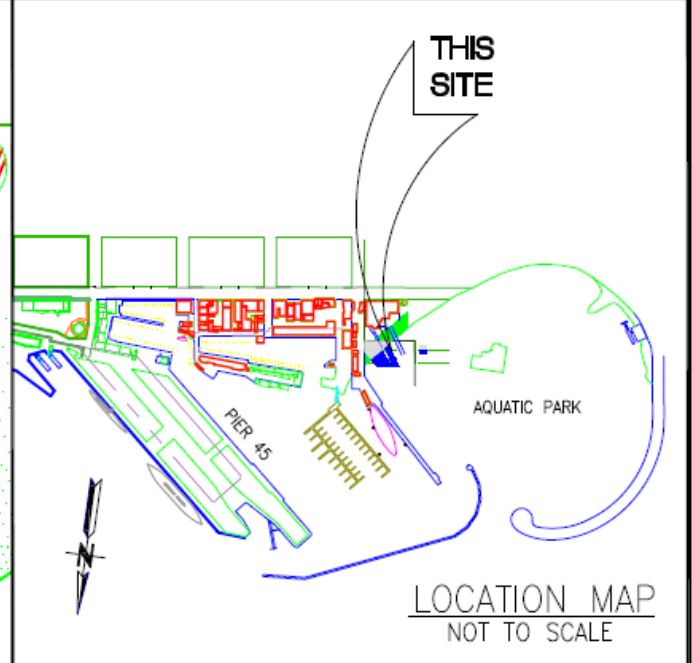
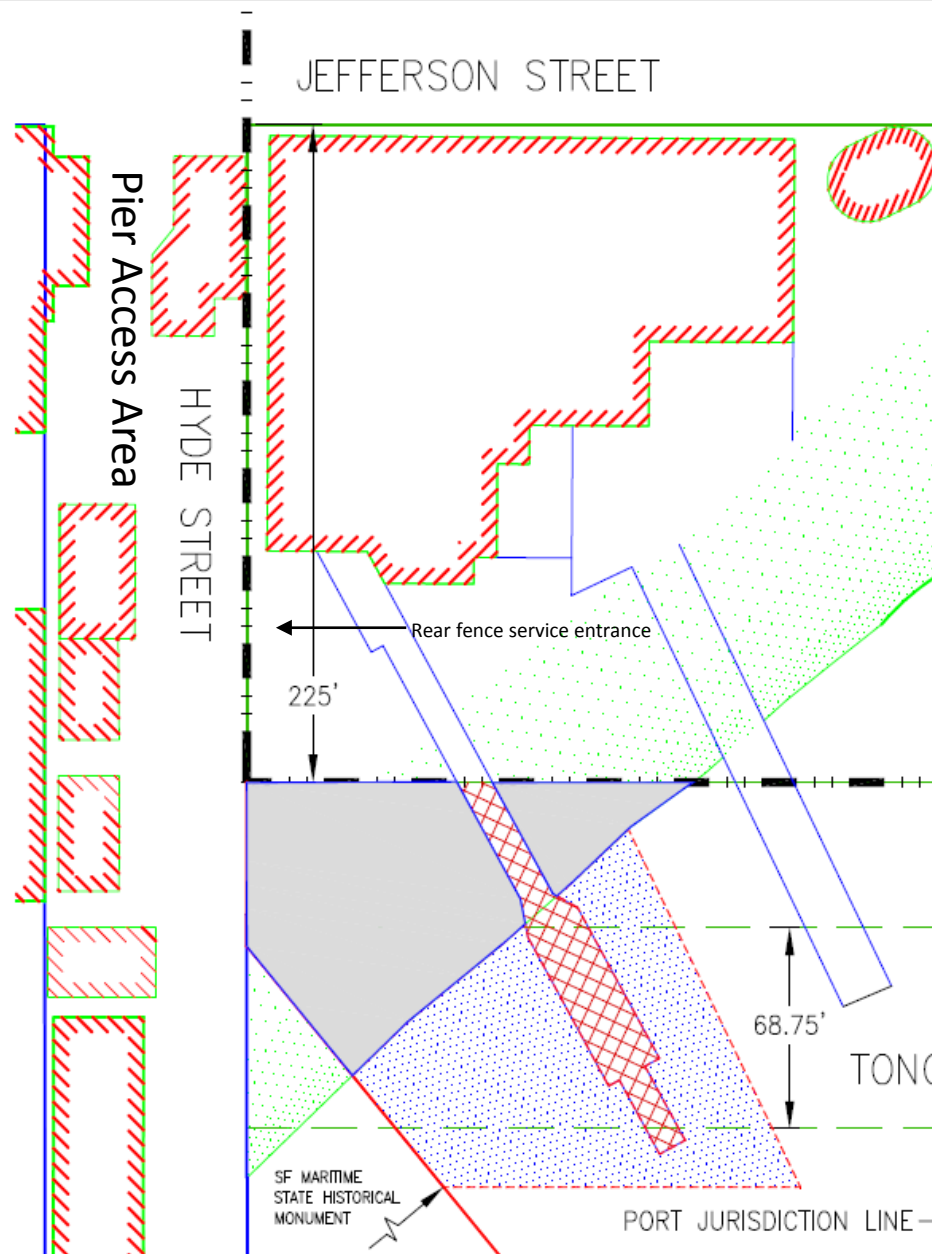
RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the MOU that the Executive Director, in consultation with the City Attorney, determines to be in the best interest of the Port, do not materially increase the obligations or liabilities of the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.




I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 12, 2019

Secretary

INITIALS: _____ PORT _____ TENANT: _____ DATE: _____

EXHIBIT A



-  LAUNCHING DOCK* = 2,061 Sq Ft
* TRACED FROM AERIAL PHOTO
 -  BEACH AREA* = 3,248 Sq Ft
* TRACED FROM AERIAL PHOTO
 -  SUBMERGED LANDS=8,380 Sq Ft
* TRACED FROM AERIAL PHOTO
- TOTAL = 13,689 Sq Ft

M.O.U. NO.
M-13773

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT
SFCC RECREATION & PARK DEPARTMENT

DRAWN BY: AMN, ECC	DATE: JAN 26, 2016
CHECKED BY: V. LEE	SCALE: 1" = 50'
PLACE CODE NO.	SHEET NO. 1
4000-00	OF 1 SHEETS



**CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR**

MEMORANDUM OF UNDERSTANDING

MOU M-13773

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

THE SAN FRANCISCO RECREATION AND PARK COMMISSION

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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EXHIBITS AND SCHEDULES

EXHIBIT A MAP OF PREMISES

SCHEDULE 1 FEMA NOTICE

SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is dated September 20, 2018, for reference purposes only, by and between the Recreation and Park Department ("RPD"), a department of the City and County of San Francisco ("City"), and the San Francisco Port Commission ("Port"), an agency of the City.

RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended) and San Francisco Charter Section 4.114, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. RPD, which has the jurisdiction over certain real property in Aquatic Park commonly known as 500 Jefferson Street, leases the building (the "Clubhouse") and the associated launching dock within its jurisdiction at such property to the South End Rowing Club ("SERC") to provide access to the waters of San Francisco Bay to their club members and to the public, as a public benefit, during certain hours.

C. The Clubhouse launching dock extends into Port's jurisdictional area and the Clubhouse needs secondary access between its rear fence service entrance and Jefferson Street over a portion of the Hyde Street Pier, which is also under Port's jurisdiction, to satisfy the San Francisco Building Code.

D. SERC keeps the Clubhouse and associated dock open to and visited by the general public for access to the bay for a reasonable daily use fee and SERC also hosts the Alcatraz Invitational, both of which provide a valuable public benefit.

E. Port is willing to allow RPD to sublease that portion of the launching dock and the underlying land and water that is within Port jurisdiction to SERC for similar uses, and to give RPD a license, and allow RPD to grant an access license to each Clubhouse tenant and licensee, over a portion of the Hyde Street on the terms and conditions described in this MOU.

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. PREMISES.

The "Premises" consists approximately of 2,061 square feet of launching dock space; 3,248 square feet of beach area and the surrounding 8,380 square feet of submerged lands within Port's jurisdiction near the intersection of Hyde Street and Jefferson Street as more particularly described on Exhibit A attached hereto.

RPD acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and

possession. RPD acknowledges that it has received and reviewed the FEMA disclosure notice attached as *Schedule 1*. RPD acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for RPD's intended use. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for RPD's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed subtenant.

3. PIER ACCESS AREA.

The "Pier Access Area" consists of the portion of the Hyde Street Pier between the Clubhouse rear fence service entrance and Jefferson Street, as further depicted on the attached Exhibit A which area is within Port's jurisdiction. RPD acknowledges and agrees that it is familiar with the Pier Access Area, accepts the Pier Access Area in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy and possession and the Permit to Use Property between Port and the National Park Service ("NPS") fully executed on March 26, 1997.

RPD acknowledges and agrees that it has investigated and inspected the condition of the Pier Access Area and its suitability for secondary access between the Clubhouse and Jefferson Street. RPD acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Pier Access Area, the present or future suitability of the Pier Access Area for secondary access, accessibility of the Pier Access Area or any other matter whatsoever relating to the Pier Access Area, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. RPD must disclose the information contained in this Section to any proposed Clubhouse tenant or licensee that receives a license to use the Pier Access Area for secondary access.

4. EFFECTIVE DATE

The "Effective Date" of this MOU shall be the date this MOU has been fully executed.

5. TERM

The "Term" of this MOU shall begin on the Effective Date and continue for twenty-five (25) years unless terminated as provided herein; provided, however, that if SERC exercises its extension option under its sublease for the Premises with RPD, the Term shall be extended through the forty-ninth (49th) anniversary of the Effective Date, provided that RPD submits a written notice to Port of SERC's execution of the extension option. Following the expiration of the Term, this MOU shall continue on a month-to-month basis at which point either party may terminate the MOU with 30-days' prior written notice. If the SERC sublease for the Premises is terminated, RPD shall have the right to terminate this MOU with respect to the Premises by delivering written notice of such termination to Port.

Notwithstanding the foregoing paragraph, secondary access over the Pier Access Area between the Clubhouse and Jefferson Street is required under the San Francisco Building Code. Such access shall not be terminated without the prior written consent of City's Department of Building Inspection and Fire Marshal.

6. NO USE FEE

Use of the Premises by RPD will enliven the waterfront by attracting people to the waterfront and raising awareness of the waterfront and its benefits and amenities at no cost to Port. Given the existing RPD lease with SERC, there is no other practical user of the Premises. In lieu of paying a use fee and as a material consideration for the Port entering into this MOU, RPD shall ensure that the Premises are available for public use on the days the Clubhouse is open to the public under the terms of the RPD lease with SERC. In addition, secondary access between the Clubhouse rear fence service entrance and Jefferson Street over the Pier Access Area is required under the San Francisco Building Code, will be non-exclusive and subject to the terms of this MOU, and is not subject to a use fee.

7. PERMITTED USE

RPD shall have the right to sublease the Premises to SERC for the provision of public access to the waters of San Francisco Bay and for incidental directly related uses and for no other purpose (collectively, the "Permitted Use"). RPD shall further have the right to use, and grant Clubhouse tenants and licensees a license over, the Pier Access Area for secondary pedestrian and vehicular access purposes only between the Clubhouse and Jefferson Street on the terms specified in this MOU while such party has the right to use the Clubhouse (the "Access Use").

8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW

RPD shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in Paragraph 6 of this MOU. RPD shall not use or permit its Clubhouse tenants or licensees to use the Pier Access Area for purposes other than the purpose set forth in Paragraph 7 of this MOU. RPD agrees not to make any material improvements or alterations to the Premises or the Pier Access Area without the prior written consent of Port (which consent shall not be unreasonably withheld) as well as obtaining any necessary Port regulatory permits. Repairs, replacement of existing portions of the Premises or Pier Access Area with similar materials or improvements that do not change the functionality or dimensions of the Premises or Pier Access Area will not require Port consent.

RPD shall not perform any act which will cause a cancellation of any insurance policy covering the Premises, the Pier Access Area, or any part thereof. RPD, at RPD's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, which shall impose any duty upon Port or RPD necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to RPD's use of the Premises. RPD shall comply, and cause Clubhouse tenants and licensees to comply, with all laws, regulations and requirements of any federal, state, and local government authority (including Port and RPD), now in force or which may hereafter be in force, in using the Pier Access Area for access purposes.

9. MAINTENANCE; SURRENDER OF PREMISES

The parties acknowledge that the Port does not and is not required to provide maintenance, repairs or security for the Premises. RPD will be strictly responsible for the security, maintenance and repair of the Premises, including without limitation any improvements that RPD might choose to make to the Premises and for any repairs to the Premises that might be necessitated by RPD's or SERC's use of the Premises, other than normal wear and tear or conditions not caused by RPD or SERC. At the expiration or any termination of this MOU, RPD shall surrender the Premises in at least as good condition as when received (subject to any

change in conditions not caused by RPD or SERC), clean and free of any items stored on the Premises by RPD and shall repair any damage to the Premises occasioned by RPD's use.

The parties acknowledge that neither RPD nor the Port is required to provide maintenance, repairs or security for the Pier Access Area under this MOU; provided, however, that RPD will be strictly responsible for repairing or causing a Clubhouse tenant or licensee to repair any damage to the Pier Access Area caused by the acts of RPD or a Clubhouse tenant or licensee. At the expiration or any termination of this MOU, RPD shall surrender the Pier Access Area in at least as good condition as when received (subject to any change in conditions not caused by RPD or a Clubhouse tenant or licensee) and shall repair any damage to the Pier Access Area occasioned by the use of RPD or a Clubhouse tenant or licensee.

(From the Port-SERC lease section 11.3 Acts of God) Nothing contained herein shall require either RPD or the Port to repair or replace the Premises as a result of damage caused by acts of war, earthquake, tidal wave or other acts of God, except that this provision shall not affect any obligation to make repairs to the Premises in the event of any damage or destruction of the Premises.

10. INSURANCE

(a) RPD shall require each Clubhouse tenant and licensee and any agent, contractor or subcontractor they hire in connection with their respective use of the Premises or the Pier Access Area (each, an "Operator") to secure, the insurance coverage specified below as applicable.

(i) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any activity on or alteration or improvement to the Premises or Pier Access Area with risk of explosion, collapse, or underground hazards.

(ii) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection the Permitted Use, the Access Use, or with activities on the Premises or Pier Access Area. This provision shall not apply to an Operator so long as it does not own any automobiles and has no employee using an automobile for such Operator's business.

(iii) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event an Operator is self-insured for the insurance required pursuant to this Section 10(a)(iii), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(iv) Personal Property Insurance. An Operator, at its sole cost and expense, shall procure and maintain on all of its personal property and improvements and

alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by the Operator for the replacement of its personal property.

(v) Watercraft Liability Insurance. If an Operator owns or operates watercraft in connection with the Premises, it shall, at its sole cost and expense, procure and maintain protection and indemnity insurance or other form of watercraft liability insurance acceptable to Port, with limits not less than Five Million Dollars (\$5,000,000) per each occurrence, including coverages for owned and non-owned watercraft; but this insurance shall be required only if the Operator owns or operates any watercraft under the provisions of the relevant RPD contract or sublease; provided, however, that, in the event the Operator receives any goods at the Premises from any watercraft, then the Operator shall require that the user of such watercraft maintain the insurance set forth in this Subsection. Notwithstanding anything in this provision to the contrary, watercraft liability insurance limits shall be not less than \$1,000,000 for owned watercraft so long as such owned watercraft are wooden row boats, kayaks, sculls and rubber-inflatable boats (e.g., zodiacs and avons).

(vi) Vessel Pollution Liability Insurance. Any Operator that owns or operates watercraft in connection with the Premises must, at its sole cost and expense, procure and maintain Vessel Pollution Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period. Notwithstanding anything in this provision to the contrary, watercraft liability insurance limits shall be not less than \$1,000,000 for owned watercraft so long as such owned watercraft are wooden row boats, kayaks, sculls and rubber-inflatable boats (e.g., zodiacs and avons).

(vii) Hull and Machinery Protection and Indemnity Insurance. Any Operator that owns or operates watercraft in connection with the Premises must, at its sole cost and expense, procure and maintain Hull and Machinery Protection and Indemnity Insurance in a form and with limited acceptable to Port.

(viii) Special Events/Participants. If an Operator holds special events at the Premises, such Operator, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(ix) Other Coverage. Such other insurance or different coverage amounts as is required by applicable law or as is generally required by commercial owners of facilities similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

(b) *Claims-Made Policies*. If any of the insurance required in this Section is provided under a claims-made form of policy, the insured entity shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of the relevant RPD contract or sublease, to the effect that should occurrences during the Term give rise to claims made after termination of the relevant RPD contract or sublease, such claims shall be covered by such claims-made policies.

(c) *Annual Aggregate Limits*. If any of the insurance required in this Section is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

(d) Payment of Premiums. The insured entity shall pay the premiums for maintaining all required insurance.

(e) Waiver of Subrogation Rights. RPD is responsible for performing its obligations under this MOU, but is not required to carry any third party insurance for the Premises. Before entering into any sublease of the Premises or license of the Pier Access Area with any party, RPD shall require such party to (i) waive any right of recovery against City, including but not limited to the Port and RPD, for any loss or damage sustained by such party with respect to the Premises, the Pier Access Area, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of the City, to the extent such loss or damage is covered by insurance which such party is required to purchase under such sublease or license or is actually covered by insurance obtained by such party, and (ii) to agree to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises and the Pier Access Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

(f) General Insurance Matters.

(i) All liability insurance policies required to be maintained by hereunder shall contain a cross-liability clause, shall name as additional insureds the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary to any other insurance available to the additional insureds with respect to claims arising under this MOU, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. In addition, all liability insurance policies required to be maintained by an Operator with respect to the Pier Access Area shall name Port's then-existing Hyde Street Pier tenant or licensee as an additional insured.

(ii) All insurance policies required to be maintained by any entity as required herein shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. RPD's compliance with this Section shall in no way relieve or decrease RPD's liability under this MOU.

(iii) All insurance policies required to be maintained by any entity hereunder shall provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to RPD and Port. Such notice shall be given in accordance with the notice provisions of Section 15.

(iv) RPD shall deliver to Port certificates of insurance and additional insured policy endorsements in a form satisfactory to Port evidencing the coverages required herein, together with evidence of payment of premiums, on or before the commencement date of any contractor sublease, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. RPD shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

11. CLAIMS AND DAMAGES

Because Port will not be receiving any fees for the use of the Premises or access over the Pier Access Area and because of certain funding restrictions imposed on Port funds due to public trust restraints, it is the understanding of the parties that Port shall not expend any funds due to or on connection with RPD's use of the Premises or the Pier Access Area. Therefore, RPD agrees to be responsible or cause its tenants, subtenants, or licensees to be responsible for all costs

associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by RPD, its agents, contractors, tenants, subtenants, licensees, or invitees, (ii) as a result of the handling of Hazardous Materials on or about the Pier Access Area by RPD, its agents, contractors, tenants, or licensees, and (iii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises from any cause or, as to the Pier Access Area, which arise as a result of RPD's acts or omissions, for the Pier Access Area which arise as a result the acts omissions by RPD or its tenants, subtenants, or licensees. In addition, each access license granted by RPD to a Clubhouse tenant and licensee shall require such Clubhouse tenant and licensee to indemnify the then-existing Port Hyde Street Pier tenant or licensee for all losses and claims arising from the active negligence or willful misconduct by such Clubhouse tenant or licensee on the Pier Access Area. The foregoing obligation of RPD shall survive the expiration or termination of this MOU.

If the Premises are damaged by fire or other casualty, then RPD shall require the tenant to repair the same provided that funds for such repairs are available for such purpose and provided that such repairs can be made within 210 days after the date of such damage.

12. PRESENCE OF HAZARDOUS MATERIALS

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, RPD is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises and the Pier Access Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials listed in the reports listed in *Schedule 2* are present on the property, copies of which have been delivered to or made available to RPD. By execution of this MOU, RPD acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. RPD must disclose the information contained in this Section 11 to any subtenant, licensee, transferee, or assignee of RPD's interest in this MOU. RPD also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

13. DEFAULT BY RPD

The occurrence of any one or more of the following events shall constitute a default by RPD:

(a) Failure to use the Premises solely for the Permitted Use or the Pier Access Area solely for the Access Use, as determined by Port in its sole and absolute discretion if such failure continues for a period of thirty (30) days following written notice from Port; or

(b) Failure to perform any other provision of this MOU if the failure to perform is not cured within ninety (90) days after Port has given written notice to RPD. If the default cannot reasonably be cured within 90 days, RPD shall not be in default of this MOU if RPD commences to cure the default within such ninety (90) day period and diligently and in good faith continues to cure the default.

14. PORT'S REMEDIES

Upon the occurrence of default by RPD with respect to the Premises, Port may at its option, without further notice or demand of any kind to RPD or to any other person, terminate RPD's right to possession of the Premises. As long as secondary access over the Pier Access Area is required under the San Francisco Building Code, Port shall not terminate the right for RPD or any Clubhouse tenant or licensee to use the Pier Access Area for the Access Use due to a default, but shall have the right to be reimbursed for any costs incurred by Port as a result of any

default by RPD or any Clubhouse tenant or licensee in such party's use of the Pier Access Area. If the San Francisco Building Code is amended so that secondary access over the Pier Access Area is no longer needed for the Clubhouse, the Port shall have the right to terminate RPD's right to use, and to grant the Clubhouse tenants and licensees the right to use, the Pier Access Area for the Access Use if there is an occurrence of default by RPD with respect to the Pier Access Area.

15. ENTRY BY PORT

The Port may enter the Premises at any reasonable time, for the purpose of inspection, inventory or repairs, and when otherwise reasonably necessary for the protection of the Port's interests. Port shall not be liable in any manner, and RPD hereby waives, and shall cause SERC to waive, any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of Port's entry onto the Premises or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

The Port, its authorized representatives, tenants, and licensees may enter the Pier Access Area at any time, and RPD hereby waives, and shall cause each Clubhouse tenant and licensee to waive, any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, arising out of entry onto the Pier Access Area or performance of any necessary or required work on the Pier Access Area by Port, its authorized representatives, its tenants, or licensees, or on account of bringing necessary materials, supplies and equipment into or through the Pier Access Area during the course thereof, except damage resulting solely from the willful misconduct of Port, its authorized representatives, tenants, or licensees.

16. NOTICE

Any notice given under this MOU 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 either the Port or RPD may designate by notice as its new address:

Address for Port: Deputy Director, Real Estate
Port of San Francisco
Pier One
San Francisco, CA 94111

Telephone No: (415) 274-0501
Fax No: (415) 274-0578

Address for RPD: Dana Ketcham
Director of Property
San Francisco Recreation and Park Department
McLaren Lodge
San Francisco, CA 94117

Telephone No: (415) 831-6868
Fax No: (415) 831-2099

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, neither the Port nor RPD may give official or binding notice by email, telephone or facsimile.

17. 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 or the Pier Access Area. In accordance with the provisions of said Statutes, Port and RPD shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from such areas.

In no event shall Port be liable to RPD for any claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of RPD, or otherwise relieve RPD from any of its obligations under this MOU.

18. UTILITIES

RPD or its subtenants shall be responsible for the actual costs for electrical and water service to the Premises and waive any claims against the Port for such service. RPD or its Clubhouse tenants or licensees shall be responsible for the actual costs for electrical and water service to the Pier Access Area and waive any claims against the Port for such service.

19. ASSIGNMENT AND SUBLEASING

Port hereby consents to the anticipated sublease between RPD and SERC for the Premises subject to all of the terms and conditions of this MOU, including without limitation the disclosures, insurance provisions and waiver of claims. If RPD wishes to sublease the Premises to any other party, it must first obtain Port's written consent, which shall not be unreasonably withheld. Port hereby consents to all licenses for secondary access granted by RPD to Clubhouse tenants and licensees subject to all of the terms and conditions of this MOU, provided RPD shall notify Port in writing notice of each license it grants to any Clubhouse tenant or licensee.

20. ENTIRE AGREEMENT

This MOU (including attached exhibits, if any) contains the entire understanding between the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this MOU 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

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

By: _____
ELAINE FORBES
Executive Director
Port of San Francisco

By: _____
PHIL GINSBURG
General Manager
San Francisco Recreation and Park Department

Date Signed: _____

Date Signed: _____

REVIEWED:
DENNIS J. HERRERA, City Attorney

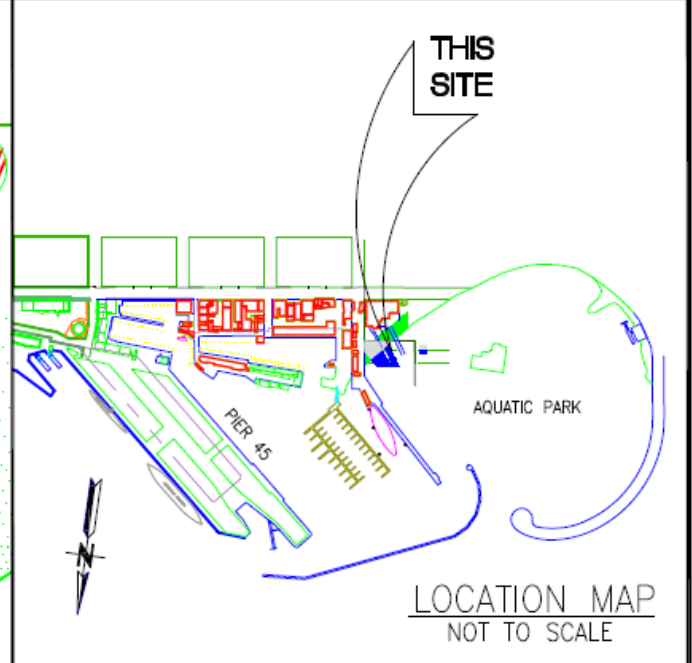
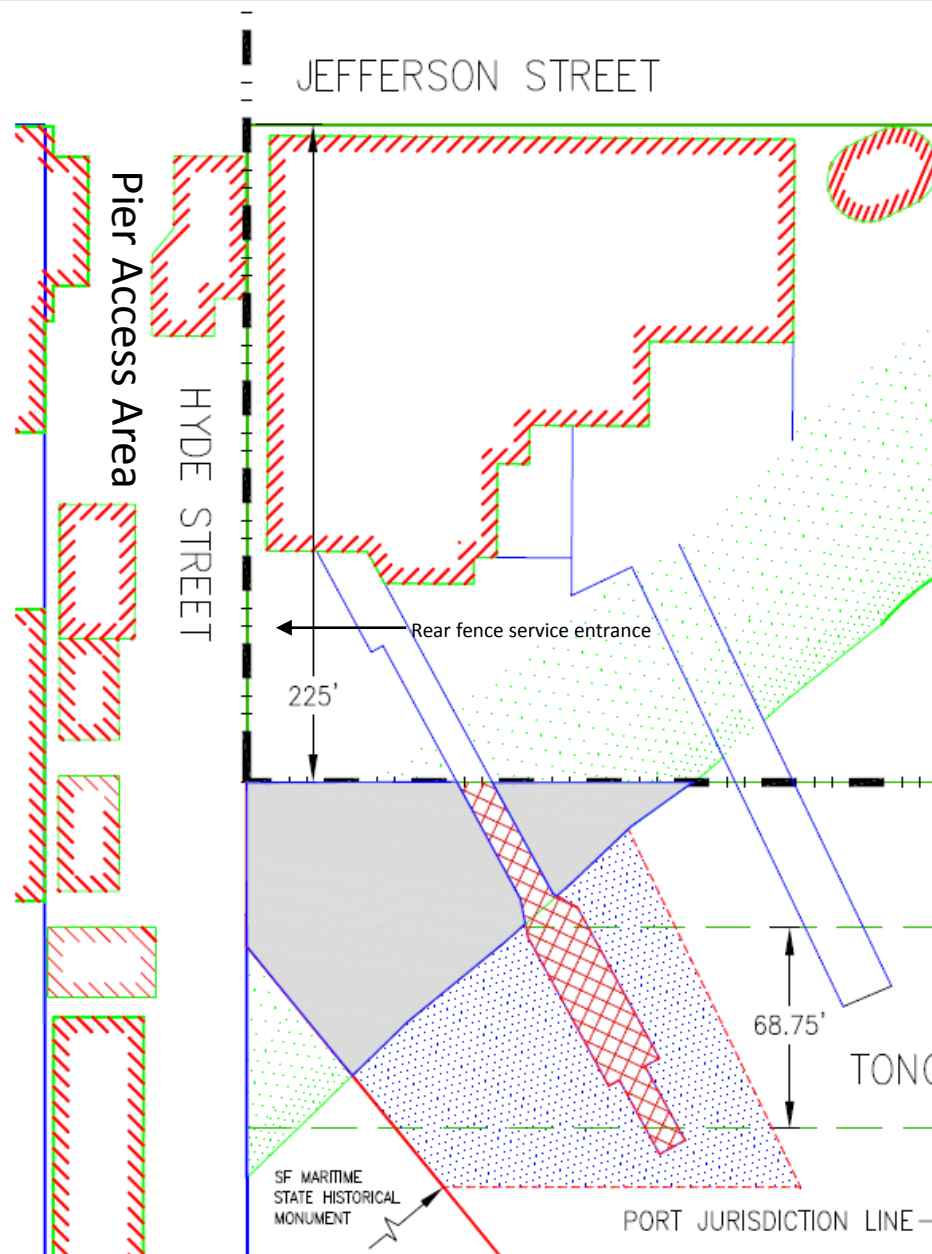
By: _____
Rona H. Sandler
Deputy City Attorney




Recreation and Park Commission Resolution No.
Port Commission Resolution No.

MOU Prepared By: Vicky Lee, Leasing Manager _____ (initial)


INITIALS: _____ PORT _____ TENANT: _____ DATE: _____

EXHIBIT A



-  LAUNCHING DOCK* = 2,061 Sq Ft
* TRACED FROM AERIAL PHOTO
 -  BEACH AREA* = 3,248 Sq Ft
* TRACED FROM AERIAL PHOTO
 -  SUBMERGED LANDS=8,380 Sq Ft
* TRACED FROM AERIAL PHOTO
- TOTAL = 13,689 Sq Ft

M.O.U. NO.
M-13773

 **SAN FRANCISCO PORT COMMISSION**
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT
SFCC RECREATION & PARK DEPARTMENT

DRAWN BY: AMN, ECC	DATE: JAN 26, 2016
CHECKED BY: V. LEE	SCALE: 1" = 50'
PLACE CODE NO. 4000-00	SHEET NO. 1 OF 1 SHEETS

SCHEDULE 1

FEMA Notice

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA"). On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

Additional information about the San Francisco legislation can be found on the city's website (<http://www.sfgov.org>).

Environmental Reports and Documents Regarding Hazardous Materials

SF Rec/Park at FW Harbor

February 1, 2018

Aquatic Park

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

Fisherman's Wharf Harbor

Final Environmental Risk Assessment, Former Mobil Bulk Terminal, 440 Jefferson St. (Wharf J10), Acton Mickelson Environmental, 5/30/14.

Fisherman's Wharf Hydrodynamic Circulation Study, PWA - Philip Williams & Associates, June 2004.

Groundwater investigation for proposed joint operations security JOS building project; Hyde Street Pier, Baseline Environmental Consulting, September 2009.

Hazardous Materials Survey Report; JOS building demolition project; At the Hyde Street Pier, Millennium Consulting Associates, July 2009.

Monitoring Program for Pier 45 Drainage Improvement Project, Water Quality at Aquatic Park, Port of San Francisco, December 12, 2011.

Results of Chemical, Physical and Bioassay Testing of Sediments for Maintenance Dredging at the Pier 39 Marina, Advanced Biological Testing, 10/24/98.

Results of Chemical, Physical and Bioassay Testing of Sediments from Hyde Street Harbor, MEC Analytical Systems, Inc, August 1998.

Results of PAH Reanalysis of Sediments for Maintenance Dredging at the Pier 39 Marina, Advanced Biological Testing, 4/21/99.

Revised Sampling and Analysis Plan, Dredging at Hyde Street Harbor, MEC Analytical Systems, Inc, July 1998.

Risk Management Plan, 440 Jefferson St. (Wharf J10 area), Acton Mickelson Environmental, 10/23/15.

Sampling and Analysis Plan, Dredging at Hyde Street Harbor, MEC Analytical Systems, Inc, June 1998.

Sampling and Analysis Plan, Sediment Dredging, Hyde Street Harbor Project, Kinnetic Laboratories Inc., October 22, 1997.

Sampling and Analysis Plan, Sediment Dredging, Hyde Street Harbor Project, Kellco Services, January 9, 1998.