

MEMORANDUM OF UNDERSTANDING
between
USS MIDWAY MUSEUM
and
SAN DIEGO UNIFIED PORT DISTRICT

This MEMORANDUM OF UNDERSTANDING (“**MOU**”) dated as of _____, 2022 (“**Effective Date**”) is made and entered by and between the San Diego Unified Port District, a public corporation (“**District**”), and the USS Midway Museum, a California nonprofit corporation (“**Midway**”). Each of District and Midway may be referred to herein as a “**Party**” and collectively the “**Parties**”.

RECITALS

WHEREAS, included in District tidelands is that certain property known as Navy Pier (“**Navy Pier**”), which is depicted on Exhibit A attached hereto and incorporated herein; and

WHEREAS, District and Midway (formerly known as San Diego Aircraft Museum) previously entered into that certain Lease dated as of September 6, 2005 (the “**Lease**”), which Lease was recorded in the Office of the District Clerk on October 6, 2015 as Document No. 49519; and

WHEREAS, pursuant to the Lease, Midway leases from District approximately 288,500 square feet of water area directly adjacent to Navy Pier as well as 31,436 square feet of land area located on Navy Pier (collectively, the “**Leased Premises**”); and

WHEREAS, under the Lease, Midway is to use the Leased Premises for the mooring of the USS Midway, the operation of a non-profit museum of naval aviation history and related education center, and parking in designated spaces for use by its volunteers; and

WHEREAS, in order to support the operations of Midway on the Leased Premises, to increase park space located on District tidelands, and to expand public access to the San Diego Bay, District and Midway desire to develop the non-leased portion of Navy Pier into a Freedom Park (as defined below) with the features described herein.

NOW THEREFORE, for good and valuable consideration, District and Midway desire to memorialize the terms and conditions on which the Parties will develop Navy Pier into Freedom Park.

AGREEMENT

1. **Term.** The term of this MOU (the “**Term**”) shall commence on the Effective Date and expire upon the completion of Freedom Park (as defined in Section 2 below), except with respect to those terms and provisions which are applicable for periods after the completion of Freedom Park, unless terminated earlier as provided herein, provided that in no event shall the Term exceed sixty-six (66) years.

2. **Purpose.** The purpose of this MOU is to establish the terms and conditions under which District and Midway will improve and fund the development of Navy Pier into Freedom Park and maintain the same following completion. For purposes hereof and subject to Section 7 below, “**Freedom Park**” shall mean a development of Navy Pier that includes a 3.75-acre park on those

portions of Navy Pier not included in the Leased Premises with an additional 1.25 acres of space not included in the Leased Premises for public parking, and that accomplishes and incorporates the following: (a) a public viewing area on the west-end of Navy Pier, along with a 10-foot wide pedestrian connection and signage along the north side of the pier from the eastern entrance on Harbor Drive; (b) usable, well-connected public park spaces with pathways around the perimeter of the pier; (c) signage to invite and welcome public to access the public park; (d) movable furniture/landscape features in areas to be reserved in support of water-dependent berthing functions; (e) reservation of areas to support other waterside amenities (e.g., water-based transit points, potentially activating features, etc.); (f) landscaping and other park-like amenities (e.g., benches, shading, etc.); and (g) a public restroom/comfort station. Subject to Section 7 below with respect to 1HWY1, Freedom Park shall include those established connections to existing park areas surrounding the USS Midway and the Leased Premises, including areas along the promenade and extending into G Street Mole to the Bob Hope Memorial. The current renderings of Freedom Park on Navy Pier are attached hereto as Exhibit B. Subject to Section 7 below with respect to 1HWY1, a depiction of those areas to be designated as park space and included in Freedom Park (which includes those established connections to existing park areas surrounding the USS Midway and the Leased Premises) is attached hereto as Exhibit C. To the extent the provisions of this MOU (including, but not limited to, the features and purposes of Freedom Park described in this Section 2 and/or in such renderings) conflict with those set forth in any Coastal Development Permit (“**CDP**”) (which shall include any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act (“**CEQA**”)) issued by either the Board of Port Commissioners (“**BPC**”) or California Coastal Commission (“**CCC**”), the terms of the CDP(s) shall control.

3. **Construction Components.** Demolition and construction of the necessary improvements to complete Freedom Park is expected to involve multiple components and phases, as set forth below. The Parties acknowledge and agree that Phase I and Phase IIA must be completed prior to initiating Phase IIB construction, provided that Phase I and Phase IIA may occur concurrently. Phase IIA and Phase IIB may be collectively referred to herein as “**Phase II**,” and Phase I and Phase II are collectively referred to herein as the “**Project**”.

a. “**Phase I**” means performing the maintenance and constructing improvements and reinforcement of the pilings supporting Navy Pier necessary to allow for the complete construction of Freedom Park, as further described on Exhibit D attached hereto and incorporated herein.

b. “**Phase IIA**” includes (i) the demolition of the headhouse currently located on the east end of Navy Pier, (ii) the necessary reinforcement of Navy Pier in the vicinity of the demolished headhouse to support future loading requirements, and (iii) Navy Pier entry improvements, including above-grade utility boxes, signage, landscape, boardwalk, and trash enclosures.

c. “**Phase IIB**” includes the remainder of the improvements to complete Freedom Park.

4. **Construction Timing.** Subject to the terms of the MOU and each Party’s compliance herewith, District agrees to construct each component of the Project as follows:

a. **Phase I:** to be completed on or before June 30, 2024 or, if extended by the California Director of Finance under California Assembly Bill 1624 (aka the Budget Act of 2022), then the deadline shall be such date, as extended.

b. **Phase IIA:** to be completed within two (2) years from (i) approval of this MOU by the BPC and (ii) issuance of the requisite CDP for Phase IIA.

c. **Phase IIB:** to be completed within five (5) years from (i) approval of this MOU by the BPC and (ii) issuance of the requisite CDP for Phase IIB.

5. **Investment.** The Parties acknowledge and agree that responsibility for the costs associated to construct the Project shall be as follows:

a. **Phase I.** District shall be responsible for all costs associated with completing Phase I.

b. **Phase II.** Midway shall be responsible for all costs associated with completing Phase II. Midway shall pay District for costs associated with Phase II pursuant to the terms of that certain Phase II Payment Agreement in the form attached hereto as Exhibit E (the "**Phase II Payment Agreement**"), which each Party agrees to execute concurrently with this MOU. Midway acknowledges and agrees that the expected costs to complete Phase II are expected to be no less than \$30,000,000.00. The terms of the Phase II Payment Agreement shall survive the termination of this MOU.

c. **Costs.** For purposes of this Section 5, and except as provided in the last sentence of this Subsection 5(c), costs applicable to Phase I or Phase II, respectively, shall include (i) all hard costs for labor, materials, and equipment associated with construction, (ii) all soft costs such as those associated with design, insurance, engineering, legal, and/or equipment, (iii) all costs associated with obtaining the necessary discretionary approvals and/or entitlements, including without limitation environmental analysis under CEQA, and the CDP(s) (including necessary third party consultant costs for preparing the reports and other materials required to process such approvals and/or entitlements), and (iv) all other costs (including those of third parties) necessary to complete Phase I or Phase II, as applicable. Notwithstanding the foregoing, District costs applicable to Phase II that are to be paid by Midway shall only include third-party costs incurred by District (as opposed to internal costs, such as employee time).

6. **Coastal Development Permits.** Subject to Subsection 15(e), District and Midway shall pursue the necessary CDP(s) with CCC (or the District, if applicable) to complete the Project, conditioned on the certification/approval of CEQA, as set forth in this Section 6.

a. The Parties plan to seek approval for development of the Project through two CDPs: one (1) for completion of Phase I and one (1) for completion of Phase II. However, the Parties understand and agree that Phase II may require two (2) separate CDPs: one (1) for the completion of Phase IIA and one (1) for the completion of Phase IIB. The CDP applicable to Phase I is in process under Coastal Development Permit Amendment No. 6-18-0282-A1.

b. The Parties acknowledge and agree to pursue the necessary CDPs as follows: District shall be the applicant/permittee and pursue the necessary CDP for Phase I, and Midway and District shall be co-applicants and co-permittees and pursue the necessary CDP(s) for Phase II.

7. **PMPU Certification.** Subject to the input and approval of BPC in its sole and absolute discretion, the draft PMPU does or will: (a) designate Navy Pier as Recreational Open

Space on the Water and Land Use Map for the Embarcadero Planning District¹; (b) designate Navy Pier as Freedom Park along with those established connections to existing park areas surrounding the USS Midway, including areas along the promenade and extending onto G Street Mole to the Bob Hope Memorial; (c) relocate the publicly-accessible scenic vista area on the bow of the USS Midway to the western end of Navy Pier following the completion of Phase II. In connection with processing of the Project for the necessary CDPs, or in connection with the draft PMPU (if adopted by the BPC prior to issuance of the necessary CDPs), the District agrees to strongly advocate for the relocation of the above-described scenic vista with CCC. Notwithstanding the foregoing, the areas designated as Freedom Park in Subsection 7(b) above shall exclude those areas covered by the Exclusive Negotiating Agreement (as the same has been amended or modified) by and between District and 1HWY1, LLC, a Delaware limited liability company (“**1HWY1**”), unless otherwise agreed to in writing by and among District, Midway, and 1HWY1, any such agreement to be within each of their sole and absolute discretion.

8. **Parking.** District intends to operate a public parking lot on 1.25 acres of Freedom Park following its completion. As part of its application for the CDP(s) needed to complete the Project, a request for an increase in the parking rates applicable to parking spaces on Navy Pier will be as follows:

Rate Types	Current Rates	New Rates
Transient Up to 1 Hour	\$5.00	\$8.00
Transient 1 to 12 Hours	\$10.00	See new times
Transient up to 6 Hours	N/A	\$20.00
Transient up to 24 Hours	N/A	\$25.00
Special Event Rate	\$20.00	\$30.00
Midway Educational Overnight Rate	\$10.00	\$10.00

Note: Rates must be reduced by 25% for period of October – March and other low periods as determined by Port (CCC Direction)

The new rates above will be proposed to the CCC for consideration and Midway agrees to support the same. At all times, the parking lot located on Navy Pier shall be operated by District, at District’s cost, and District shall be entitled to all revenues received from the same.

9. **Activating Uses.** The Parties further acknowledge and agree that as part of the requisite CDP(s) for the Project, District intends to request that CCC allow for up to four (4) activating uses such as kiosks or commercial pavilions within Freedom Park. To the extent any such uses are permitted, any kiosk(s) or commercial pavilion(s) located within Freedom Park shall be operated by District, at District’s cost, or by a third party pursuant to an agreement between District and such third party, and District shall be entitled to all revenues received from the same.

10. **Park Maintenance.** Subject to Subsection 15(e), District and Midway agree to execute that certain Park Maintenance Agreement attached hereto to Exhibit F (the “**Park Maintenance Agreement**”) concurrently with this MOU. District agrees to hold the fully executed Park Maintenance Agreement in escrow pending completion of Freedom Park, and upon such completion, District is authorized to date the Park Maintenance Agreement as of the completion date and circulate the executed and dated Park Maintenance Agreement to Midway, at which time it will automatically become effective and binding upon the Parties. Pursuant to the Park

¹ As Recreational Open Space, Water and Land Use Map, and Embarcadero Planning District are all defined in the draft PMPU.

Maintenance Agreement, District agrees to maintain Freedom Park in good condition and repair, and Midway agrees to pay District for fifty percent (50%) of the costs and expenses in connection therewith. The Park Maintenance Agreement, as well as the terms set forth therein, shall survive the termination of this MOU upon the completion of Freedom Park.

11. **Park Naming.** The Parties acknowledge and agree that "Freedom Park" is being used solely for purposes of this MOU. Should Midway desire to use a name for the Project in connection with any fundraising efforts (including, but not limited to, on flyers, mailings, presentations, and/or promotional materials) for the Project costs or for Midway's share of amounts owed under the Park Maintenance Agreement, District and Midway agree to collaborate in good faith on such naming, and Midway understands and agrees that any naming associated with the Project for fundraising purposes must be preapproved in writing by the Executed Director of District. Notwithstanding the foregoing, Midway acknowledges and agrees that Midway shall not have the right to sell any naming rights for any of the physical improvements and/or elements associated with the Project (including, but not limited to, any benches, walking paths, plaques, trees, and/or signage) without approval by the Executive Director of District, which approval may be granted, withheld, or conditioned in the Executive Director's sole and absolute discretion. The terms of this Section 11 shall survive the expiration or termination of this Agreement.

12. **Compliance with Laws.** All work to construct, repair, maintain, and operate the Project shall be done in accordance with all present and future California state, federal, and local laws, rules, orders, ordinances, regulations, statutes, and requirements, which shall include, but are not limited to, the San Diego Unified Port District Code, the California Coastal Act, CEQA, any applicable ordinances of the City of San Diego, including the building code thereof, and any governmental permits and approvals, including, without limitation, any applicable amendment to the Port Master Plan and any CDP (collectively, "**Laws**").

13. **Force Majeure.** The deadlines to complete Phase I and Phase II shall each be subject to a day for day extension due to a Force Majeure Event. For purposes hereof, a "**Force Majeure Event**" means an actual delay in the construction of the Project caused by: (a) a strike or labor dispute; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the City of San Diego during the month or months when work was suspended; (c) earthquake, epidemic, pandemic, or other natural disaster resulting in suspension of work; (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price); (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief; (f) casualty causing material damage to previously constructed Project improvements; or (g) delays in the issuance of any governmental approvals or authorizations from government agencies necessary to proceed with development or operation of the Project. In addition to the foregoing, (i) with respect to Phase I, "Force Majeure Event" shall also mean unanticipated events or needs that necessitate District budget cuts, and (ii) with respect to both Phases I and II, a default by one Party under the terms of this MOU shall be deemed a Force Majeure Event applicable to the other Party's relevant obligations under this MOU. The Parties each agree to take commercially reasonable efforts to minimize and otherwise overcome the impact on the construction schedule caused by any Force Majeure Event.

14. **Default/Remedies.** Failure by either Party to perform any express or implied covenants or conditions in this MOU should such failure continue for thirty (30) days after written notice thereof is given by the other Party shall constitute a default hereunder; provided that if the nature of the failure is such that the same cannot reasonably be cured within such thirty (30) day period, the non-compliant Party shall not be deemed to be in default if it diligently commences

such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of one-hundred eighty (180) days after written notice thereof to the non-compliant Party from the other Party. .

Upon any default, the non-defaulting Party, in addition to all other rights and remedies afforded to the non-defaulting Party hereunder or by law or equity, may terminate this MOU upon giving the defaulting Party notice thereof.

For avoidance of doubt, the terms and conditions of the Phase II Payment Agreement and/or the Park Maintenance Agreement, respectively, shall govern with respect to a default and/or remedies for a default of a Party's obligations under either such agreement.

15. **Miscellaneous.**

a. **Project Submittals.** The District and Midway agree to (i) collaborate in good faith on the development and final design efforts for Freedom Park and all requisite submissions to CCC, including public access amenities and park features, maintenance of public parking on 1.25 acres on Navy Pier, reservations of areas along Navy Pier to support waterside amenities and vessel berthing functions, access and loading/offloading areas for visits, and (ii) strongly support all submittals furthering the intent and purposes of this MOU (including, but not limited to, those set forth in Sections 7, 8, and 9 above).

b. **District's Right to Use the Property.** The Midway acknowledges and agrees that until the commencement of construction for the Project, and to the extent permissible during the construction of the Project and provided it does not conflict with the same, District shall have the right, in its sole and absolute discretion, to (i) to use, operate, manage or lease all or any portion of Navy Pier, (ii) to construct or to permit construction of infrastructure on Navy Pier, (iii) to demolish, or to permit demolition, of any improvements on Navy Pier, (iv) to construct, or to permit construction on Navy Pier, (v) to convey portions of Navy Pier and/or grant easements in Navy Pier to the City of San Diego or to any public or quasi-public entity or to any utility as necessary or desirable for the development of Navy Pier, and (vi) to issue temporary licenses or other grant of access rights to Navy Pier to the City of San Diego and/or to any other third party, as necessary or desirable for the development of utilities and infrastructure on, above or under Navy Pier; provided that for purposes of this Subsection 15(b), those portions of Navy Pier included in the Leased Premises shall be excluded and governed by the terms of the Lease.

c. **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the Parties affecting this MOU and this MOU constitutes the Parties' entire agreement with respect to the matters set forth in this MOU and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto with respect to the subject matter thereof. None of the terms, covenants, conditions or provisions of this MOU can be modified, deleted or added to except in writing signed by the Parties. The recitals set forth above are incorporated herein by reference.

d. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of California. The courts of the State of California shall have jurisdiction over any action arising out of this MOU and over the Parties. Venue for any legal proceeding shall be in San Diego County, California.

e. **CEQA, Entitlements, and Reservation of Discretion.** The Parties acknowledge and agree that no approval of a project under CEQA has occurred with the approval

and execution of this MOU. Midway acknowledges and agrees that, notwithstanding the terms and conditions of this MOU, District reserves its discretion to approve, disapprove or condition all actions, which require the exercise of discretion, including without limitation all legislative and quasi-judicial actions that District cannot lawfully be committed to by contract (collectively, "**Discretionary Action**") and that nothing in this MOU will be construed as circumventing or limiting District's discretion with respect to environmental review required by CEQA, approval of the PMPU, an amendment to the existing Port Master Plan, CDP, CDP exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations. Midway acknowledges and agrees that any and all Discretionary Actions may be approved, denied or conditioned by the District, in its sole and absolute determination. Additionally, the District may approve all feasible mitigation measures and adopt or deny the adoption of a Statement of Overriding Considerations, if applicable. The Midway accepts the risk that the District will deny any and all Discretionary Actions, and hereby waives any claims, demands, actions, causes of action, suits, in law or equity, against the District for said denial.

f. **Severability.** If any term, provision or condition contained in this MOU shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this MOU shall be valid and enforceable to the fullest extent possible permitted by Law.

g. **Third Party Beneficiary Rights.** The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed to create such status. The rights, duties and obligations contained in this MOU shall operate only between the Parties to this MOU and shall inure solely to the benefit of the Parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The Parties to this MOU intend and expressly agree that only Parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

h. **Notices.** All notices provided for by this MOU or by Law to be given or served upon District or Midway shall be addressed as set forth below (as such address may have been changed by subsequent notice given to the other Party) and shall be in writing and: (i) personally served upon District or Midway, (ii) delivered via reputable over-night courier service, or (iii) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the Parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the Party served forty-eight (48) hours after deposit in the U.S. Mail.

District Notice Address:

President/CEO
Executive Offices
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

Midway Notice Address:

Mac McLaughlin, President/CEO
USS Midway Museum
910 North Harbor Drive
San Diego, CA 92101

i. **Counterparts.** This MOU may be executed in counterparts with the same effect as if both Parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single document. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

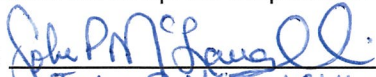
[SIGNATURE PAGE FOLLOWS]

In witness whereof, the Parties to this MOU through their duly authorized representatives have executed this MOU as of the Effective Date stated above, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Name: _____
Title: _____

USS MIDWAY MUSEUM,
a California nonprofit corporation

By: 
Name: JOHN P. McLAUGHLIN
Title: PRESIDENT & CEO

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

EXHIBIT A

Depiction of Navy Pier

(attached)

Exhibit A – Navy Pier

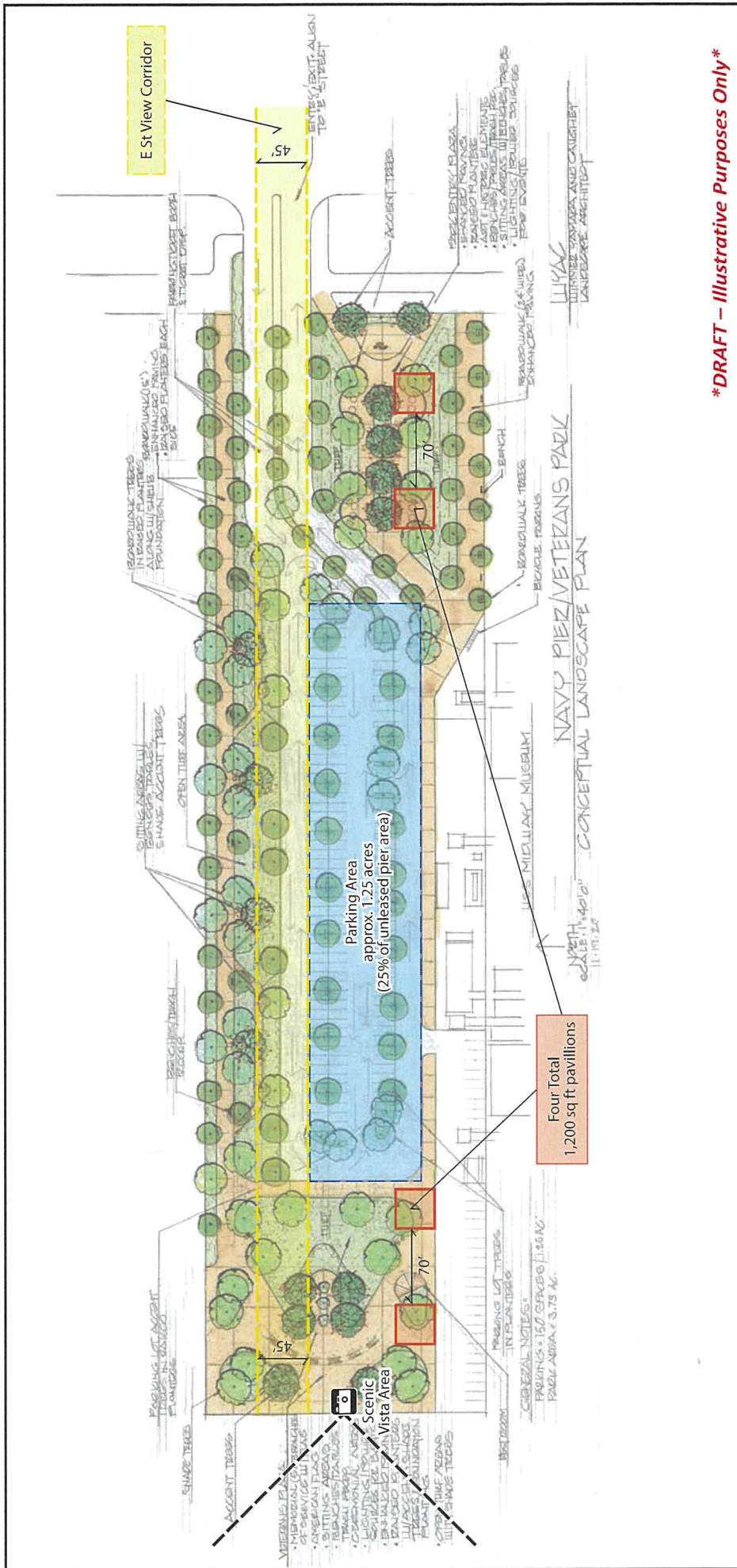


EXHIBIT B

Renderings for Freedom Park on Navy Pier

(attached)

Exhibit B - Conceptual Rendering of Freedom Park on Navy Pier



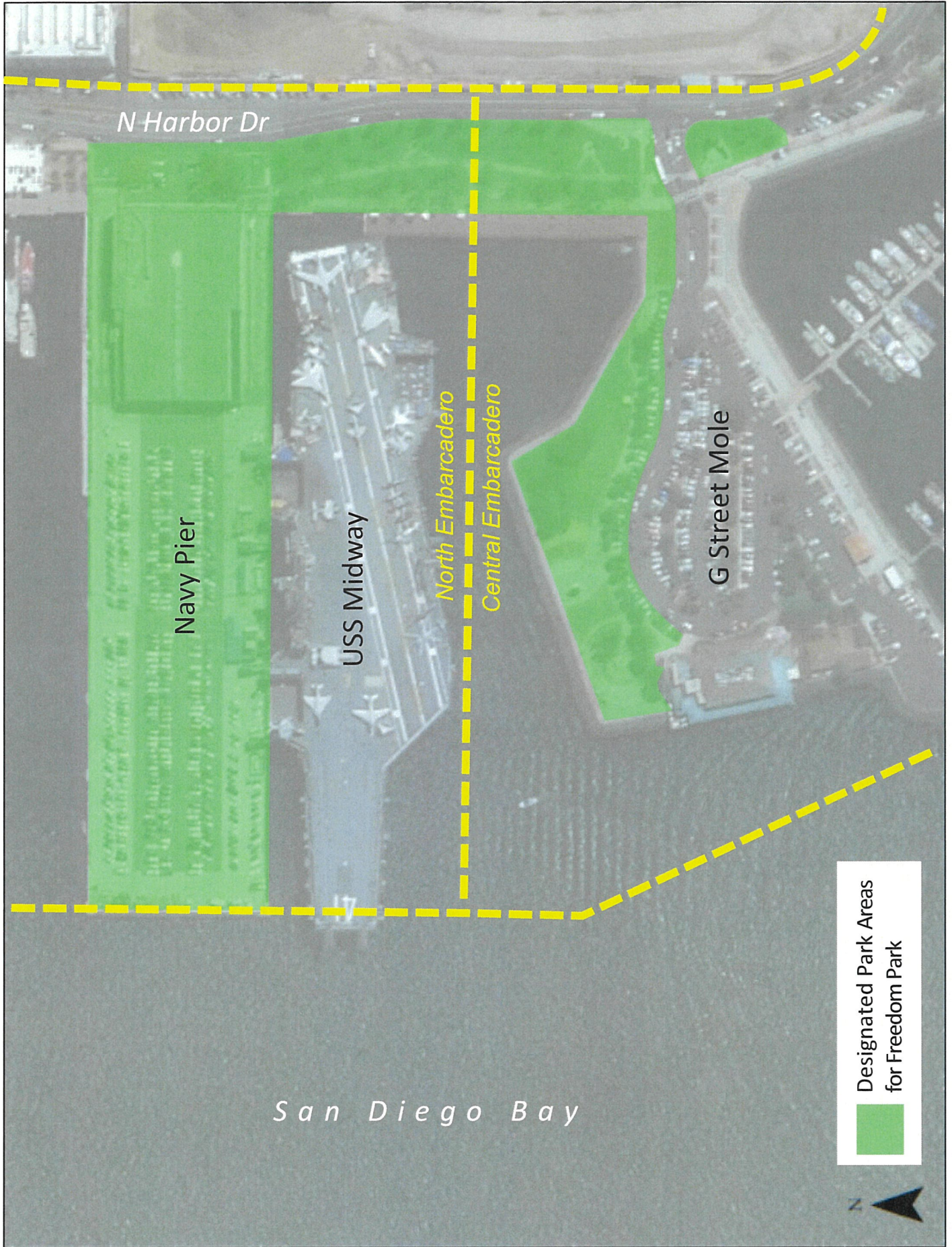
Four Total
1,200 sq ft pavilions

DRAFT – Illustrative Purposes Only

EXHIBIT C

Freedom Park Depicted, including Navy Pier, Promenade, and Area of G Street Mole
(attached)

Exhibit C - Designated Park Areas for Freedom Park



N Harbor Dr

Navy Pier

USS Midway

North Embarcadero

Central Embarcadero

G Street Mole

San Diego Bay

Designated Park Areas
for Freedom Park



EXHIBIT D

Phase I – Description of the Work

- Full length encasement of 20-inch square concrete piles at the year-1928 pier (approximately 257 piles)
- Cast-in-place concrete repair at beams, pile caps, pile tops, soffit, low caps, and retaining walls under deck the y-1928 & y-1941 piers (695 areas, approximately 2200 cubic feet).
- Epoxy-inject repair of miscellaneous cracks found during preconstruction survey at beams, pile caps, pile tops, soffit, low caps, and retaining walls under deck the y-1928 & y-1941 piers (approximately 500 linear feet).

EXHIBIT E

Phase II Payment Agreement

This PHASE II PAYMENT AGREEMENT ("**Agreement**") dated as of _____, 2022 ("**Effective Date**") is made and entered by and between the San Diego Unified Port District, a public corporation ("**District**"), and the USS Midway Museum, a California nonprofit corporation ("**Midway**"). Each of District and Midway may be referred to herein as a "**Party**" and collectively the "**Parties**".

WHEREAS, District and Midway have entered into that certain Memorandum of Understanding dated as of _____, 2022 ("**MOU**"); and

WHEREAS, terms capitalized herein but not otherwise defined shall have the meanings ascribed to them in the MOU; and

WHEREAS, pursuant to the terms of the MOU, the Parties agreed to the process by which Navy Pier will be developed into Freedom Park; and

WHEREAS, the MOU requires the Parties to enter into this Agreement concurrently with the execution of the MOU; and

WHEREAS, in order to satisfy their respective obligations under the MOU, the Parties are entering into this Agreement regarding payment of Costs (as defined below) incurred by District related to Phase II.

NOW THEREFORE, for good and valuable consideration, District and Midway enter into this Agreement to provide for payment to District of Costs incurred related to Phase II of Freedom Park.

AGREEMENT

1. **Phase II Costs.** The Parties understand and agree that Midway shall be responsible for all Costs (as defined below) associated with completing Phase II, and Midway acknowledges and agrees that the expected Costs to complete Phase II are expected to be no less than \$30,000,000.00. For purposes of this Agreement, "**Costs**" shall be defined as all costs and expenses associated with Phase II, including, but not limited to: (a) all hard costs for labor, materials, and equipment associated with construction; (b) all soft costs such as those associated with design, insurance, engineering, legal, and/or equipment; (c) all costs associated with obtaining the necessary discretionary approvals and/or entitlements, including without limitation environmental analysis under CEQA, and the CDP(s) (including necessary third party consultant costs for preparing the reports and other materials required to process such approvals and/or entitlements), and (d) all other costs necessary to complete Phase II (including third party costs). Notwithstanding the foregoing, Costs incurred by the District that are applicable to Phase II that are to be paid by Midway per this Section 1 shall only include third-party costs incurred by District (as opposed to internal costs, such as employee time).

2. **Payment.** Midway agrees that District, which is to construct Phase II pursuant to the terms of the MOU, will incur the vast majority of the Costs associated with Phase II, and Midway agrees to pay District for all third-party Costs incurred by District within thirty (30) days of Midway's receipt of an invoice(s) or statement(s) from District for the subject amount(s) and,

if applicable, copies of third-party invoices (which may be paid or unpaid), work description, and/or other reasonable evidence of the work performed for and all Costs incurred by District. With respect to third-party Costs that have been incurred but not paid by District, Midway agrees to compensate the applicable third-party directly for applicable Costs within thirty (30) days following Midway's receipt of a third-party invoice and a notice of District's approval of such invoice.

3. **Default/Remedies.** Failure by either Party to perform any express or implied covenants or conditions in this Agreement should such failure continue for thirty (30) days after written notice thereof is given by the other Party shall constitute a default hereunder. A default under this Agreement shall additionally constitute a default under the MOU. Should Midway default by failing to pay District for Costs in accordance with the terms of this Agreement, Midway shall be liable for other amounts necessary to compensate District for all detriment proximately caused by Midway's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, without limitation, additional amounts and/or penalties owed by the District under any agreements with third parties, reasonable attorneys' fees, and any other reasonable costs.

4. **Attorneys' Fees.** Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting, and executing such judgment.

5. **Applicable Law.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of California. The courts of the State of California shall have jurisdiction over any action arising out of this Agreement and over the Parties. Venue for any legal proceeding shall be in San Diego County, California.

6. **Payments.** All payments of Costs shall be delivered to District's Treasurer. Checks shall be made payable to the San Diego Unified Port District and mailed to SDUPD General Account Lockbox, PO Box 841615, Los Angeles, CA 90084-1615, or delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California 92101. District may change the designated place of payment or filing at any time upon thirty (30) days' written notice to Midway.

7. **Notices.** All notices provided for by this Agreement or required by applicable law to be given or served upon District or Midway shall be addressed as set forth below (as such address may have been changed by subsequent notice given to the other Party) and shall be in writing and (a) personally served, (b) delivered via reputable over-night courier service, (c) delivered by U.S. postal service certified letter, or (d) via email at the email address set forth below; provided however, that any notice delivered via email shall also be sent via another method permitted hereunder on the same day of such email transmission. Any notice will be deemed given (i) if served by certified mail, forty-eight (48) hours after deposit in the U.S. Mail, (ii) the date the overnight courier delivery is made or refused, (iii) the date personal delivery is made or refused, or (iv) as of the date on which the email is sent if at or before 5:00 p.m. (receiver's time) on any business day, or as of the next business day if the email is sent after 5:00 p.m. (receiver's time) or not a business day.

District Notice Address:

President/CEO
Executive Offices
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Email: jstuyvesant@portofsandiego.org

Midway Notice Address:

Mac McLaughlin, President/CEO
USS Midway Museum
910 North Harbor Drive
San Diego, CA 92101
Email: mmclaughlin@midway.org

8. **Recitals.** The recitals first set forth above are hereby incorporated into the terms of this Agreement.

9. **Entire Agreement/Amendments.** It is understood and acknowledged that there are no oral agreements between the Parties affecting this Agreement and this Agreement constitutes the Parties' entire agreement with respect to the matters set forth in this Agreement. None of the terms, covenants, conditions, or provisions of this Agreement can be modified, deleted or added to except in writing signed by the Parties.

10. **Survival.** The Parties respective obligations under this Agreement are independent of those under the MOU and shall survive the termination and/or expiration of the MOU.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

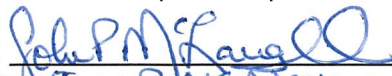
[SIGNATURE PAGE FOLLOWS]

In witness whereof, the Parties to this Phase II Payment Agreement through their duty authorized representatives have executed this Phase II Payment Agreement as of the Effective Date stated above, and certify that they have read, understood, and agreed to the terms and conditions of this Phase II Payment Agreement as set forth herein.

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Name: _____
Title: _____

USS MIDWAY MUSEUM,
a California nonprofit corporation

By: 
Name: JOHN P. MCLAUGHLIN
Title: President & CEO

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

EXHIBIT F

Park Maintenance Agreement

This PARK MAINTENANCE AGREEMENT ("**Agreement**") dated as of _____, 2022 ("**Effective Date**") is made and entered by and between the San Diego Unified Port District, a public corporation ("**District**"), and the USS Midway Museum, a California nonprofit corporation ("**Midway**"). Each of District and Midway may be referred to herein as a "**Party**" and collectively the "**Parties**".

WHEREAS, District and Midway have entered into that certain Memorandum of Understanding dated as of _____, 2022 ("**MOU**"); and

WHEREAS, terms capitalized herein but not otherwise defined shall have the meanings ascribed to them in the MOU; and

WHEREAS, pursuant to the terms of the MOU, the Parties agreed to the process by which Navy Pier would be developed into Freedom Park; and

WHEREAS, the development and construction of Freedom Park has been completed; and

WHEREAS, in order to satisfy their respective obligations under the MOU, the Parties are entering into this Agreement to provide for the ongoing maintenance of Freedom Park and the costs thereof.

NOW THEREFORE, for good and valuable consideration, District and Midway enter into this Agreement to provide for the ongoing maintenance of Freedom Park and the sharing of the costs thereof.

AGREEMENT

1. **Park Maintenance.** The Parties agree that District shall perform all ongoing maintenance and make all repairs and replacements, ordinary as well as extraordinary, structural or otherwise, which may be necessary or required so that Freedom Park is in good condition and repair, reasonable wear and tear as well as casualty excepted. In connection therewith, District shall provide containers for the collection of garbage in compliance with applicable laws (which may involve separate receptacles for trash, recycling, organics (including food waste and greenery)) and keep Freedom Park and the facilities thereon in a clean, safe, healthy, and sanitary condition, free and clear of rubbish and litter. Maintenance responsibilities shall include routine and scheduled landscaping, graffiti removal, litter pickup and removal, sweeping, power washing, hardscape cleaning, and, if applicable, window cleaning, roof debris and gutter cleaning. All of the responsibilities set forth in this Section 1 shall be completed in accordance with District's standard maintenance/repair/replacement schedule as established by District in its reasonable discretion.

2. **Cost Sharing.** For purposes of this Agreement, "**Costs**" shall be defined as all costs and expenses incurred by District in performing its responsibilities described in Section 1 above, including, but not limited to, costs for District's agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, and/or workmen, and costs for associated supplies, materials, and equipment. On or before March 1 of each year that this Agreement is in effect, District agrees to invoice Midway for all Costs of the prior calendar year (or partial calendar

year to the extent that the Effective Date does not fall on January 1), and Midway agrees to pay District fifty percent (50%) of the Costs stated in such invoice within thirty (30) days of receiving the same. The Parties understand and agree that in preparing an invoice for Costs, District will take into account, among other things, Costs paid to third-parties as well as the allocation of District's workforce (and the Costs associated therewith) to perform District's responsibilities under Section 1 above. Further, Midway acknowledges and agrees that certain Costs incurred by District in order to perform its maintenance and repair responsibilities described in Section 1 above will not occur on a yearly basis, such as capital expenditures and/or replacement of park features and/or materials.

3. **Extraordinary Costs.** For purposes hereof, "**Extraordinary Costs**" shall mean any and all incremental costs and expenses (beyond Costs as defined above) to maintain Freedom Park in a condition beyond that required by Section 1 above. In the event Midway desires District to incur Extraordinary Costs in order to maintain Freedom Park beyond the standard set forth in Section 1 above, Midway shall make a request to District and the Parties shall meet and confer on the same, but in any event Midway shall be solely responsible for all Extraordinary Costs.

4. **Default/Remedies.** Failure by either Party to perform any express or implied covenants or conditions in this Agreement should such failure continue for thirty (30) days after written notice thereof is given by the other Party shall constitute a default hereunder. A default under this Agreement shall additionally constitute a default under the MOU. Should Midway default by failing to pay District for Costs in accordance with the terms of this Agreement, unpaid amounts shall accrue interest at the Default Rate from the date such amount was due until paid. For purposes hereof, the "**Default Rate**" shall be an annual rate equal to the lesser of (a) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (b) the highest rate permitted by applicable law.

5. **Attorneys' Fees.** Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting, and executing such judgment.

6. **Applicable Law.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of California. The courts of the State of California shall have jurisdiction over any action arising out of this Agreement and over the Parties. Venue for any legal proceeding shall be in San Diego County, California.

7. **Payments.** All payments of Midway's share of Costs and Capital Expenses shall be delivered to District's Treasurer. Checks shall be made payable to the San Diego Unified Port District and mailed to SDUPD General Account Lockbox, PO Box 841615, Los Angeles, CA 90084-1615, or delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California 92101. District may change the designated place of payment or filing at any time upon thirty (30) days' written notice to Midway.

8. **Notices.** All notices provided for by this Agreement or required by applicable law to be given or served upon District or Midway shall be addressed as set forth below (as such address may have been changed by subsequent notice given to the other Party) and shall be in

writing and (a) personally served, (b) delivered via reputable over-night courier service, (c) delivered by U.S. postal service certified letter, or (d) via email at the email address set forth below; provided however, that any notice delivered via email shall also be sent via another method permitted hereunder on the same day of such email transmission. Any notice will be deemed given (i) if served by certified mail, forty-eight (48) hours after deposit in the U.S. Mail, (ii) the date the overnight courier delivery is made or refused, (iii) the date personal delivery is made or refused, or (iv) as of the date on which the email is sent if at or before 5:00 p.m. (receiver's time) on any business day, or as of the next business day if the email is sent after 5:00 p.m. (receiver's time) or not a business day.

District Notice Address:

President/CEO
 Executive Offices
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 Email: jstuyvesant@portofsandiego.org

Midway Notice Address:

Mac McLaughlin, President/CEO
 USS Midway Museum
 910 North Harbor Drive
 San Diego, CA 92101
 Email: mmclaughlin@midway.org

9. **Recitals.** The recitals first set forth above are hereby incorporated into the terms of this Agreement.

10. **Entire Agreement/Amendments.** It is understood and acknowledged that there are no oral agreements between the Parties affecting this Agreement and this Agreement constitutes the Parties' entire agreement with respect to the matters set forth in this Agreement. None of the terms, covenants, conditions, or provisions of this Agreement can be modified, deleted or added to except in writing signed by the Parties.

11. **Survival.** The Parties respective obligations under this Agreement are independent of those under the MOU and shall survive the termination and/or expiration of the MOU. This Agreement shall remain in full force and effect until terminated by mutual agreement in writing signed by the Parties. However, within thirty (30) days of the ten (10) year anniversary of this Agreement and of each and every ten (10) years thereafter, the Parties agree to meet and confer in good faith on any revisions to the provisions of this Agreement that the Parties mutually believe will improve the administration of Freedom Park; provided that any such revisions and/or changes shall be subject to Section 10 above, with each Party retaining sole and absolute discretion to enter into (or to not enter into) any writing to revise, modify, delete, and/or add to this Agreement.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and

treated as if they were original signatures.

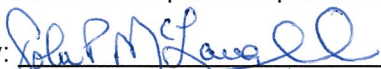
[SIGNATURE PAGE FOLLOWS]

In witness whereof, the Parties to this Park Maintenance Agreement through their duty authorized representatives have executed this Park Maintenance Agreement as of the Effective Date stated above, and certify that they have read, understood, and agreed to the terms and conditions of this Park Maintenance Agreement as set forth herein.

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Name: _____
Title: _____

USS MIDWAY MUSEUM,
a California nonprofit corporation

By: 
Name: JOHN P. McLAUGHLIN
Title: President & CEO

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel