

GRANT ACCEPTANCE AGREEMENT

Between Crocker Amazon Project, LLC
and the San Francisco Recreation and Park Department
regarding Crocker Amazon Baseball and Softball Fields

RECITALS

WHEREAS, RPD operates and maintains certain real property owned by the City that is commonly referred to as Crocker Amazon Playground (“Crocker”), located at 799 Moscow Street in San Francisco, California; and

WHEREAS, The Giants Community Fund, which is the sole member of Crocker Amazon, LLC, uses baseball and softball to promote health, education and character development to propel youth in underserved regions to be positive forces in their communities. The Giants Community Fund is a 501(c)(3) public charity that has donated \$52 million to community efforts and has served more than 500,000 youth; and

WHEREAS, RPD is proposing a public-private partnership to renovate the Baseball and Softball Fields at Crocker, at a total cost of approximately \$50,000,000 (the “Project”); and

WHEREAS, A preliminary design for the Project is attached as **Exhibit A**, however, approval of this Agreement shall not constitute approval of a concept plan for the Project, which shall be subject to approval by the Recreation and Park Commission following community outreach and any required environmental review; and

WHEREAS, The Project would install state-of-the-art synthetic and natural turf baseball and softball fields and other amenities such as a restroom building, covered batting cages, parking lot improvements, new field and site lighting, dog play areas, an outdoor plaza space, adult fitness area, new irrigation and landscape, and other amenities and improvements that can be enjoyed by neighbors and all park users from across the city, as well as support equitable access through a variety of youth enrichment programs and amenities; and

WHEREAS, The Grantor has proposed to award RPD cash and in-kind grants of design, construction, and other professional services for the Project, valued at approximately \$28 million (“the Grant”); and

WHEREAS, RPD has budgeted a total of \$22 million for the Project through the 2020 Health and Recovery Bond and other public funding (the “City Funds”); and

WHEREAS, On _____, the Board of Supervisors on recommendation of the Recreation and Park Commission (RPC Resolution No. _____) adopted Board Resolution No. _____, to approve this Grant Agreement and to authorize RPD to accept and expend the Grant; and

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by the Parties (the “Effective Date”), the Parties agree as follows:

1. Term. This Agreement shall become effective upon full execution and delivery hereof by the Parties. This Agreement shall expire once the Grant has been expended and the Project is complete.

2. Project Overview. The parties agree to collaborate on the Project based on the Budget and Schedule attached as **Exhibit B**. Exhibit B is intended to be preliminary, and the parties may review and update the Budget and Schedule from time to time upon in writing by mutual agreement. No party shall be obligated to make up any funding shortfall, unless expressly agreed to by such party in writing. If any Grant funds remain after the Project is complete, RPD will use those funds for the sole purpose of improving and maintaining the Project, in consultation with Grantor.

3. Sources of Funding.

a. **Public Funding.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. If funds required for any of City's or RPD's responsibilities under this Agreement are not appropriated for any portion of a fiscal year, then City may immediately terminate this Agreement without penalty, liability, or expense of any kind by written notice to Grantor. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Grantor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

b. **Grantor's Funding.** Grantor has not yet secured all funds necessary to fund the Grant but will engage in a fundraising campaign ("the Campaign"). Grantor has set a goal to raise \$28,000,000 for the Project in the form of third-party donations, contributions, and/or grants of cash, in-kind services, and/or materials (collectively, "the Campaign Funds"). Grantor will consult with RPD in advance regarding any Campaign fundraising materials including any grant applications. Additionally, RPD acknowledges that Grantor may retain up to 10% of any cash contributions it raises through the Campaign as an administrative fee; provided, however, that Grantor must disclose the amount of the administrative fee to all Campaign donors. Grantor must accept and track all Campaign Funds; hold Campaign Funds in a restricted account; provide RPD monthly updates on Campaign revenue, expenses, and balances; and expend all Campaign Funds (net of the administrative fee) on the Project in accordance with this Agreement. Grantor's use of Campaign Funds may be subject to audit by the City.

4. Grant. Grantor shall disburse the Grant through a combination of cash and in-kind grants, consistent with the Budget and the following requirements:

4.1 Cash Grant / Miscellaneous In-Kind Grants. Grantor may deliver Cash Grants to RPD on execution of this Agreement. With RPD's approval, Grantor may also use the Cash Grant to purchase equipment, professional services, or materials for the Project.

4.2 In-Kind Grants – Professional Services. The in-Kind Grant of professional services from architects, engineers, independent construction management services, inspection and building commissioning services and the like (all collectively, "Consultants") retained by Grantor

shall be at no cost to the City. The in-Kind Grants shall include the delivery of conceptual, schematic, and detailed designs, construction documents, and technical specifications (“Project Documents”) for the Project and related assistance during construction. Grantor’s agreements with the Consultants shall include the terms and conditions listed in **Exhibit D** and shall be approved by RPD prior to any such Consultant commencing work on the Project.

4.3 In-Kind Grant – Project Work. The in-Kind grant of services from contractors retained by Grantor to perform work on the Project (“Contractors”) shall be at no cost to the City. Each Contractor’s scope of work (the “Scope of Work”) shall be subject to advance approval by RPD. Additionally, Grantor shall abide by the terms and conditions listed in **Exhibit E**, to the extent it is performing contractor services, and Grantor’s agreements with Contractors shall also include these terms and conditions. Contractors shall coordinate with RPD on the start of construction. Contractors shall also, in good faith, coordinate directly with the City’s contractors to execute the project construction. Before work may begin, Grantor also must certify to RPD that it has in place all funds necessary to complete the approved Scope of Work, and that it will hold those funds in reserve to complete the work and will not spend the funds for any other purpose. Upon such certification, RPD shall issue Contractor a written notice to proceed, which shall constitute the grant of a revocable, personal, unassignable, non-exclusive and non-possessory privilege to the Contractor to enter the area of the Park that RPD has approved for the work (“the Permit Area”) for the limited purpose of completing the approved Scope of Work. Without limiting any of its rights hereunder, City may revoke this permission as set forth in this Agreement without any obligation to pay any consideration to Contractor.

5. RPD Responsibilities.

- a. RPD acknowledges that Grantor’s fundraising campaign will include signage and naming opportunities that recognize San Francisco Giants legends and donors at various levels, as set forth in **Exhibit C**, Donor Recognition Opportunities. RPD General Manager may modify the Donor Recognition Plan in consultation with Grantor, provided that any previously granted naming rights cannot be rescinded without Grantor consent. Grantor acknowledges that the Donor Recognition Opportunities and any modifications thereto must conform to the Recreation and Parks Commission Grant Policy (Res. No. 0103-042) and to RPD’s signage standards, and agrees to cause all such donor recognition and signage to be in conformance with the approved donor recognition plan.
 - i. The Facility shall be known as the “Willie Mays Fields of Champions.” Such name shall be the sole and complete name of the facility and shall be placed on the facility in a location, style, size, and form acceptable to Grantor and the Recreation and Park Commission. The facility shall bear such a name for 50 years from the completion of the project, unless and until any of the following occur first: (a) the Grantor directs the removal of the name; (b) the Commission determines in its reasonable and good faith opinion that associating the above name with the Facility would adversely impact the reputation, image, mission or integrity of RPD, in which case, the Grantor shall be promptly provided with a full, written explanation of the reasons for the nature of the expected adverse impact.

- ii. Other unassigned namings at the facility shall be in accordance with the Donor Recognition Plan set forth in **Exhibit C**.
- b. Participate in regularly scheduled coordination meetings with Grantor, Consultants, and Contractors as needed.
- c. Facilitate community meetings and use social media, postings, printed reports and other methods as appropriate to familiarize and engage the public with the Project.
- d. Coordinate necessary reviews and approvals for the design, permitting, and construction of the Project, including but not limited to environmental review, compliance with disability access laws, stormwater management ordinance compliance, hazardous materials inspections and monitoring, and geotechnical investigations and reports.
- e. Maintain accurate accounting records related to its expenditures for the Project, for at least two years after Project completion. Grantor may, at its own expense and on reasonable notice to RPD, review these records.
- f. Maintain the Project after its completion, in a good condition and consistent with RPD's prevailing maintenance practices. Improvements shall remain at the Park through the term of this Agreement or for their useful life, in RPD's sole discretion.

6. Indemnification. Each Party ("the Indemnifying Party") shall defend, indemnify, and hold harmless the other Party including that Party's officers, agents and employees (collectively, the "Indemnified Persons") from any and all loss, expense, damage, injury, liability and claims thereof, for injury to or death of any person, including employees and agents of the Indemnifying Party, or loss of or damage to property ("Losses"), resulting directly or indirectly from any activity conducted under this Agreement by the Indemnifying Party including its agents, employees or volunteers, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on any of the Indemnified Persons, except to the extent where such loss, damage, injury, liability or claim is the result of the sole negligence or intentional or willful misconduct of the Indemnified Persons. In the event of concurrent negligence, the liability for any and all Losses shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified. Additionally, each of the Parties shall use commercially reasonable efforts to mitigate their respective Losses.

7. Insurance. Grantor shall maintain at all times during its activities in the Park insurance described in the certificate attached hereto as **Exhibit F**, and to name the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Grantor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Grantor's indemnification obligations under this Agreement or any of grantor's other obligations hereunder.

8. Public Relations. The Parties shall cooperate in good faith on matters of public relations and media responses related to the Project. Any response to an inquiry by a news or community

organization to either Party in reference to the Project shall include a recommendation to contact the other Party. Neither Party shall issue a press release in regard to this Agreement without providing prior notice to the other party. To facilitate the performance of this Section, the Parties have each designated spokesperson(s) listed below under “Contacts”. Nothing in this Agreement shall prohibit either Party from discussing this Agreement in response to inquiries from the public or the press. At a time and in a format to be determined by the Parties, RPD and Grantor may hold joint public ribbon cutting ceremonies at the completed sites. At any such event, the Parties shall participate on an equal basis. If RPD or Grantor holds any other event solely or largely dedicated to the Project such as a volunteer event, the Parties shall notify the other Party and allow that Party to participate on an equal basis. Materials and collateral for the Project shall be approved by RPD and Grantor.

9. Additional Financial Reporting and Audit Provisions. The parties shall also comply with the provisions regarding financial reporting and auditing requirements attached hereto as **Exhibit G** which are fully incorporated herein.

10. Contacts/Notices

RPD: 501 Stanyan Street, San Francisco, CA 94117

RPD Media and Public Relations	RPD Project Manager	RPD Partnerships
Beverly Ng	Dan Mauer	Daliah Khoury
beverly.ng@sfgov.org	dan.mauer@sfgov.org	daliah.khoury@sfgov.org
(415) 831-6852	(628) 652-6630	(415) 831-6897

Grantor: Crocker Amazon Project, LLC, 24 Willie Mays Plaza, San Francisco, CA 94107

Sue Petersen
Executive Director, Giants Community Fund
spetersen@sfgiants.com

11. Sunshine Ordinance and Donor Disclosures. Grantor understands and acknowledges that this Agreement, and any document between the Parties, shall be subject to the disclosure requirements of the City’s Sunshine Ordinance and the California Public Records Act. In addition, Grantor agrees to disclose information regarding the amounts and sources of funding and donor financial interest information as set forth in Administrative Code Section 67.29-6, to provide a copy of all required reports and disclosures to RPD, and to provide all information requested by RPD to enable RPD to comply with its disclosure obligations. To ensure compliance with this requirement and to maximize public transparency, Grantor will not accept anonymous donations from any single source aggregating more than \$100 for the Project.

12. Termination. The parties shall attempt to cooperatively resolve all disputes. Following such efforts, either Party may terminate this Agreement if it provides the other Party written notice of that Party’s failure to comply with a material term of this Agreement, including a failure

by Grantor's agents or invitees to comply with terms applicable to them under this Agreement, and if the failure is not cured to the complaining Party's reasonable satisfaction within 30 days or such other reasonable timeframe mutually agreed to by the Parties in writing. However, all provisions regarding indemnification and insurance shall survive the expiration/termination of this Agreement.

13. Conflicts of Interest. By executing this Agreement, Grantor certifies that it is not aware of, and shall promptly inform RPD if becomes aware of, a conflict of interest arising out of this Agreement. For example, Grantor will notify RPD if it becomes aware that any RPD employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, the Parties agree and acknowledge that Grantor's support of RPD, or lack thereof, shall have no bearing on and shall not be relevant towards any future contracting, leasing, or permitting decisions by RPD.

14. Miscellaneous.

a. **Entire Agreement.** This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

b. **Compliance with Applicable Laws.** All actions described herein are subject to and must be conducted and accomplished in accordance with the City's charter, its municipal code, and all applicable local, state and federal laws, building codes and regulations. Grantor understands and agrees that RPD is entering into this agreement in its capacity as a property owner, and that nothing herein shall limit Grantor's obligations to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

c. **Approvals.** Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made by the General Manager of RPD or his or her designee in his or her sole and absolute discretion.

d. **Independent Relations.** Nothing herein contained shall be construed as creating the relationship of employer and employee between the City and Grantor or any of their respective agents or employees or Contractors. Grantor shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. Grantor shall exercise full control and supervision of its duties and full control and responsibility as to the employment, direction, compensation, and discharge of all persons assisting it in the performance this Agreement. Nothing set forth in this Agreement shall be deemed to render the City a partner in Grantor's business, or a joint venture or member in any joint enterprise with Grantor.

e. **No Third-Party Beneficiaries.** Nothing contained in this Agreement shall create or justify any claim against the City or Grantor by any third person with respect to the performance of any duties or other projects being undertaken by Grantor or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

f. **Amendments.** This Agreement may be amended or modified only in writing by the Parties. The RPD General Manager, in consultation with the City Attorney, may execute such amendments on behalf of the City, provided the amendments are in the best interests of the City, do not materially increase the City's obligations or liabilities, are necessary or advisable to effectuate the purposes of the Project, and are in compliance with all applicable laws.

g. **Assignments.** Neither Party shall assign, transfer, or encumber its interest in this Agreement or any other right, privilege, or license conferred by this Agreement, either in whole or in part, without obtaining the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion. Any nonconsensual assignment, transfer, or encumbrance shall be void and of no force and effect.

h. **Governing Law.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to this Agreement shall be in San Francisco.

i. **Good Standing.** Grantor represents that it is in good standing under the laws of the State where it is incorporated. Upon City's request, Grantor shall provide documentation demonstrating its compliance with such legal requirements. Each Party shall provide the other party written notice promptly following any and all changes in circumstances that could reasonably be expected to cause the noticing party to become unable to comply with its obligations under this Agreement.

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IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the dates set forth next to their names.

APPROVED:

Jack Bair, Chief Development Officer Date
San Francisco Giants

Sarah Madland, Interim GM Date
Recreation and Park Department

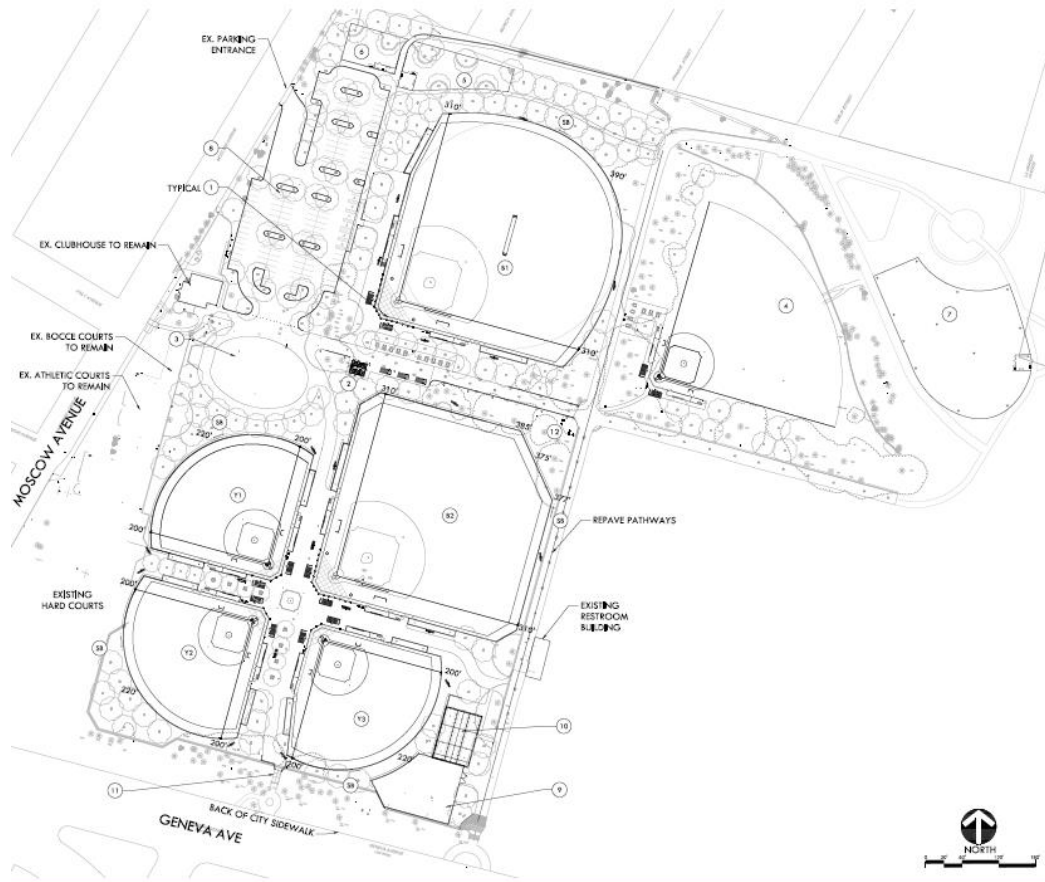
APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
Deputy City Attorney Manu Pradhan

Attachments:

- Exhibit A: Conceptual Project Overview
- Exhibit B: Preliminary Budget/Schedule
- Exhibit C: Donor Recognition Opportunities
- Exhibit D: Design Professional Terms
- Exhibit E: Contractor Terms
- Exhibit F: Grantor Insurance
- Exhibit G: Additional Financial Provisions

EXHIBIT A CONCEPTUAL PROJECT OVERVIEW



LEGEND

- 81 ADULT BASEBALL FIELD WITH CHAIN LINK DUGOUTS WITH CRICKET FIELD IN OUTFIELD
- 82 ADULT BASEBALL FIELD WITH CHAIN LINK DUGOUTS
- 11 12 YOUTH FIELD WITH CONCRETE BLEACHER PADS AND CHAIN LINK DUGOUTS
- 18 SCOREBOARD AND FLAGPOLES
- 1 OVERHEAD TRUSS BACKSTOP AT ALL FIELDS.
- 2 SIX UNI-SEX STALL RESTROOM
- 3 OUTDOOR PLAZA (15,000 SF NATURAL GRASS INTERIOR - 3,000 CAPACITY (5 SF/PERSON - HIGH CAPACITY); 1,200 CAPACITY (10 SF/PERSON - LOW CAPACITY)) AND TEMPORARY STAGE SPACE WITH SEES AND BACKCROP
- 4 'AIRPLANE' FIELD RENOVATION WITH REPLACEMENT TO CHAIN LINK FENCING, DUGOUTS, INFIELD FINES, NATURAL TURF FIELD AND IRRIGATION REPAIRS AS NEEDED. FIELD AREA IS AVAILABLE FOR OTHER ACTIVITIES AND DOES NOT HAVE OUTFIELD FENCE.
- 5 LARGE DOG PARK
- 6 SMALL DOG PARK
- 7 UPPER LARGE DOG PARK (MULCH WITH SOLAR LIGHTING)
- 8 PARKING LOT WITH DROP-OFF LOCATION (3 ADA ACCESSIBLE STALLS, 1 ADA VAN STALL, 2 ADA EV STALLS, 10 STANDARD EV STALLS & 129 STANDARD STALLS = 145 TOTAL STALLS) (EXISTING PARKING LOT HAS 75 STANDARD AND 6 ADA STALLS FOR 81 TOTAL EXISTING STALLS)
- 9 FENCED-IN YARD FOR STORAGE OF VEHICLES AND LARGE EQUIPMENT (40' x 32')
- 10 THREE-STATION INDOOR BATTING CAGES (86' x 62')
- 11 EXISTING STAIRS TO REMAIN
- 12 FITNESS AREA

NOTES: PROJECT WILL INCLUDE THE FOLLOWING:

1. WITH EXCEPTION OF 'AIRPLANE' FIELD, ALL FIELDS TO BE SYNTHETIC TURF.
2. STORM WATER INFRASTRUCTURE REQUIRED BY PUC STORM WATER ORDINANCE.
3. NEW STORM WATER DRAINAGE INFRASTRUCTURE.
4. NEW IRRIGATION SYSTEM THROUGHOUT THE PROJECT AREA.
5. REMOVED TREES (92 TOTAL) WILL REQUIRE A MINIMUM OF TWO REPLACEMENT TREES PER EACH TREE REMOVED (184 MIN. TOTAL). REMAINING TREE CANOPIES ARE VISUAL ESTIMATES.

VIEW PROJECT NO. 210003
October 01, 2023



Crocker Amazon Baseball Complex
Crocker Amazon Park
San Francisco, CA



**EXHIBIT B
PROJECT BUDGET AND SCHEDULE**

Preliminary Project Budget:

Crocker Amazon Ball Diamonds		Crocker Amazon Project LLC	RPD
EXPENSES			
Project Management		\$700,000	\$500,000
Regulatory		\$0	\$250,000
Planning & Design		\$3,000,000	\$500,000
Bidding & Contracting		\$0	\$100,000
Construction & Contingency		\$24,300,000	\$20,650,000
	TOTAL EXPENSES	\$28,000,000	\$22,000,000
SOURCES			
2020 Health & Recovery Bond		\$0	\$15,000,000
Public Funding		\$0	\$7,000,000
Private Grant		\$28,000,000	\$0
	TOTAL SOURCES	\$28,000,000	\$22,000,000

Preliminary Project Schedule:

Planning & Design Development	Current – August 2026
Construction Documents and Review	September 2026 – October 2027
Bid/Award Phase	August 2027 – December 2027
Construction Phase	January 2028 – August 2029

EXHIBIT C
DONOR RECOGNITION OPPORTUNITIES

CROCKER AMAZON

BASEBALL AND SOFTBALL FIELDS RENOVATION



GIFT LEVEL	RECOGNITION OPPORTUNITY
\$5,000,000	Complex
\$3,000,000 <i>per field</i>	Full-Size Baseball Fields 1
\$2,000,000 <i>per field</i>	Youth Baseball & Softball Fields 3
	Public Gathering Plaza 3
\$1,000,000	Batting Cages 4
\$250,000	Large & Small Dog Play Areas 5
	Picnic Area 6
	Outdoor Fitness Area 7
\$100,000	Dugouts

Note: The complex and fields will be named after Giants greats.

**EXHIBIT D
DESIGN PROFESSIONALS
REQUIRED CONTRACT TERMS**

1. Code Compliance.

Consultants shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's work on the Project. Where there is an irreconcilable discrepancy between any of the above-mentioned codes and regulations, the Consultants shall identify to RPD the irreconcilable discrepancy, exercise a professional standard of care in determining which code or regulation governs, and provide RPD with the basis for its determination. In the event of changes in codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultants and which result in a substantive change to the plans, the Consultants shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of complying with the changes. The Consultants shall be responsible to identify, analyze and report to the City on pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California building codes and San Francisco Building Code and other amendments.

2. Standard of Performance

The Consultants shall perform its services in accordance with the professional standard of care applicable to the design and construction of projects of similar size and complexity in the San Francisco Bay Area.

3. Delivery of Project Documents

Project Documents shall bear the stamp and signature of the licensed design professional and shall be submitted to RPD for review prior to planned advertisement for bids for the construction of the Project. These reviews will include conceptual plan review and at a minimum three (3) internal review periods during the development of the project documents. Project Documents shall be provided to RPD in both hard copy and digital format, which includes CADD files of the final construction documents. RPD shall have a perpetual, non-exclusive license to use all Project Documents and any necessary drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, construction documents and/or designs developed for the Project.

4. Insurance

Consultants must maintain in force, during the full term of its Agreement with Grantor, insurance in the following amounts and coverages:

- A. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness. Consultants hereby agrees to waive subrogation which any of its insurers may acquire from Consultants by virtue of the payment of any loss. Consultants agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and Grantor for all work performed by the Consultants, its employees, agents and subconsultants.

- B. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- C. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- D. Professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- E. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - 1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees and Grantor, its Officers, Agents, and Employees.
 - 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- F. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.
- G. Should any of the required insurance be provided under a claims-made form, Consultants shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- H. Should any of the required insurance, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- I. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- J. Before commencing any operations under this Agreement, Consultants shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

K. Approval of the insurance by City and/or Grantor shall not relieve or decrease the liability of Consultants hereunder.

5. Indemnity

A. Defense Obligations. To the fullest extent permitted by law, Consultants shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultants, any subconsultants, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Consultants for the proportionate percentage of defense costs exceeding Consultant's proportionate percentage of fault as determined by a Court of competent jurisdiction.

B. Indemnity Obligations. To the fullest extent permitted by law, Consultants shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses.

C. Copyright Infringement. Consultants shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

D. Severability Clause Specific to Indemnification and/or Defense Obligations. To the extent any Court of competent jurisdiction or law invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

6. Third Party Beneficiary

The City shall be named as a third party beneficiary in the Consultants Agreement.

**EXHIBIT E
CONTRACTORS
REQUIRED CONTRACT TERMS**

1. Exercise of Due Care.

Contractor shall not exceed the approved Scope of Work, and shall use due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area. Contractors shall take such soil and resource conservation and protection measures with the Permit Area as City may request. City shall have the right to approve and supervise any excavation and construction work. Under no circumstances shall Contractors damage, harm or take any rare, threatened or endangered species on or about the Permit Area. Contractors shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to its work in the Permit Area. Contractors shall also maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition; upon completion remove all debris and restore the Permit Area to its condition immediately prior to construction, to the satisfaction of City; and immediately at its sole cost repair any and all damage to the Permit Area or property. The City shall be named a third-party beneficiary of the agreement with the Contractor.

2. Acceptance of Work.

RPD shall receive written notice when the Contractor deems the Work complete ("Notice of Substantial Completion"). RPD shall perform an inspection within ten (10) working days after receiving the Notice, and shall have five (5) days after the inspection to inform Contractor whether the Work is approved. Upon receipt of written notice that RPD has approved the Work (the "Acceptance Letter"), Contractor shall remove all of its materials, tools, equipment, and personal property from the Park, and shall repair any damage to the Park, at its sole cost. Within ten (10) days after the date of the Acceptance Letter, Grantor/Contractor shall deliver the Work to RPD free and clear of all liens, easements and potential claims arising from the Project; shall provide RPD fully executed waivers and releases from all contractors and subcontractors of all claims against the City, its employees and agents; and shall assign to RPD all warranties or guaranties related to the Work.

3. Additional Requirements.

- a. Contractor shall obtain any and all necessary City permits (with exception of the project building permit from Department of Building Inspections) and comply with applicable laws including disability access laws and with required noticing procedures before closing any sidewalks.
- b. Contractor shall comply with RPD's Standard Construction Measures, and shall implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers, fencing and caution signage and/or tape.
- c. Contractor shall pay its workers the prevailing rate of wage for the craft or classification of work performed, and provide certified payroll records to City on request pursuant to City-standard practices.

- d. Contractor shall adhere to Occupational Safety & Health Administration standards related to the Project.
- e. Contractor shall warrant and guarantee to the City that materials and equipment used for the Project will be first-class in quality and new, that the work will be free from defects and of the quality specified, and that the work will conform to the requirements of the contract documents.
- f. Contractor shall not construct or place any temporary or permanent structures or improvements on the Permit Area, or alter any existing structures or improvements on the Permit Area, except for the approved Scope of Work.
- g. Contractor shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.
- h. Contractor shall not cause, nor allow its Agents or Invitees to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Contractor shall immediately notify City when it learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Contractor shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Contractor or its Agents or Invitees causes a release of Hazardous Material, Contractor shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Contractor shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.
- i. Contractor shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of

objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

4. Insurance

Contractor must maintain all of the insurance as set forth below, during the full term of its Agreement with Grantor and at all times during its activities in the Park, naming the City and County of San Francisco, its officers, employees and agents as additional insureds. Before commencing any operations under this Agreement, Contractor(s) shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Contractor's indemnification obligations under this Agreement or any of Contractor's other obligations hereunder.

- a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness. Contractor hereby agrees to waive subrogation which any of its insurers may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and Grantor for all work performed by the Consultants, its employees, agents and subconsultants.
- b. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- c. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- d. Professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- e. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - i. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- f. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.
- g. Should any of the required insurance be provided under a claims-made form, Consultants shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to

claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- h. Should any of the required insurance, be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- i. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- j. Before commencing any operations under this Agreement, Consultants shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
- k. Approval of the insurance by City and/or Grantor shall not relieve or decrease the liability of Consultants hereunder.
- l. If a subcontractor will be used to complete any portion of this Agreement, Consultants shall ensure that its subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees, Grantor, its officers, agents and employees and the Consultants as additional insureds.

5. Indemnification

- a. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City and County of San Francisco, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including, but not limited to attorneys fees, directly or indirectly arising out of, connected with or resulting from the performance of the Contract. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- b. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arises out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

- c. The City shall provide Contractor with prompt written notice after receipt of any claim, action or demand (“claim”) made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City’s and other indemnified parties’ consent for Contractor’s choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified party may retain separate counsel co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City’s or other indemnified parties’ reasonable opinion, adequately represent Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor’s obligation to reimburse City’s and other indemnified parties’ costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.
- i. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon the City and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.
 - ii. If Contractor does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Section 5 (Indemnification).

EXHIBIT F
GRANTOR INSURANCE

Grantor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

A. Workers' Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.

B. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 General Aggregate, Combined Single Limit for Bodily Injury and Property Damage. Such policies shall also be endorsed to state that they are the primary insurance over any other insurance available to the Additional Insureds with respect to any claims arising under the Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

C. Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim, for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such for the Grantor and/or Fiscal Sponsor of Grantor. If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement. The coverage shall be continuous for the duration of the agreement and for not less than 24 months following the end of the Agreement.

EXHIBIT G
ADDITIONAL FINANCIAL REPORTING AND AUDITING PROVISIONS

- A. **Acknowledgment of Disclosure Obligations under City Law.** San Francisco Administrative Code Section 67.29-6 requires the Department to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under this Agreement, the disclosure must identify Grantor as the contributor, the amounts contributed, and a statement as to any financial interest Grantor has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Department must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from Grantor in any related resolution or ordinance submitted to the Board of Supervisors for approval.
- B. **Grantor's Reporting & Disclosure Obligations.**
1. **Donor and Grant Information.** Grantor agrees to comply with Section 67.29-6 by posting on its website the names of all individuals or organizations that contribute \$100 or more to Grantor, by gift, grants, or other instruments, in the form of money, goods, or services, for the purpose of carrying out or assisting the Department's performance of its City functions; the amounts contributed; and a statement as to any financial interest the donor contributing to the Grantor has involving the City, including any donor's contract, grant, lease, or request for license, permit, or other entitlement for use. Grantor will post this information on its website within 30 days of receipt of any gift, grant or other instrument, and will also provide this information to the Department each year by no later than July 15 for the preceding fiscal year. Grantor will maintain this donor information on its website until at least the end of the fifth fiscal year after the donation. To ensure compliance with this requirement and to maximize public transparency, Grantor will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under this Agreement. These provisions shall also apply to any grants received by Grantor, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.
 2. **Financial Reports.** Grantor will provide to the Department and the Department will upload a PDF (searchable text) copy of the Grantor's annual audited financial report and IRS Form 990 annual tax return into the City's financial system as part of the Agreement documentation and prior to City's execution of this Agreement. The annual audited financial report filings provided by the Grantor must include detailed information about the Grantor's total sources and uses of funds and also the sources and uses of funds dedicated to support the Department covered under this Agreement, the names of the Grantor's Board of Directors and Officers, and the names of any and all payees of Funds covered by

this Agreement, including consultants, contractors and subcontractors and any current or past City employees paid and any funds provided directly to the City Department to support the Department's functions including but not limited to employee recognition and public events. Additionally, Grantor will post its audited financial report and its IRS Form 990 and all related tax return schedules on its website annually within 60 days of the completion of each.

3. **Links to Grantor Website.** The Department will provide a link on its website to Grantor's website for the public to readily access the information required under this Agreement. Grantor will also post this Agreement on its website along with copies of any other copies of Grant Awards or other City Contracts and Agreements with any City Department including the Department covered by this Agreement.
4. **Grantor's Supplier Registration.** As part of the Agreement execution, the must register and submit an IRS Form W-9 through the SF City Partner portal, a complete copy of their most recent IRS Form 990 tax return and complete their Approved Supplier set up through the Controller's Supplier Management Unit.
5. **Grantor's Invoices through SF City Partner Online (eSettlements) site.** If the Agreement includes invoicing by Grantor to the City Department, all invoices must be submitted online with any/all required supporting documentation through the SF City Partner portal's Online eSettlements site.

C. **Recordkeeping and Auditing.**

1. **Recordkeeping.** Grantor will maintain books and records relating to this Agreement, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Department and/or the City's Controller, at their discretion, to audit Grantor's records and to verify contributions and expenditures in accordance with this Agreement.
2. **Auditing.** Grantor shall make such books and records relating to this Agreement available to the Department and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. Grantor shall retain and shall allow the Department and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five (5) years after the issuance date of the Grantor's audited financial statement or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.