

**AGREEMENT FOR IMPROVEMENTS TO AND CONSTRUCTION OF  
CIVIC CENTER PLAYGROUNDS**

This Agreement for Design and Construction of Civic Center Playgrounds ("Agreement"), is entered as of *November 5<sup>th</sup>*, 2014, by and between The Trust for Public Land ("TPL"), a California nonprofit public benefit corporation, and the City and County of San Francisco ("City") acting through its Recreation and Park Department ("RPD"), collectively referred to herein as the "Parties."

**RECITALS**

A. Project Site. The City, through RPD, operates and maintains the Joseph L. Alioto Performing Arts Piazza, also known as Civic Center Plaza, which includes two existing playgrounds located in the City and County of San Francisco, CA on Larkin Street between McAllister and Grove Streets, described on Exhibit A attached hereto and commonly referred to as "Civic Center Playgrounds" (the "Project Site"). The Project Site is under the jurisdiction of the Recreation and Park Commission. See Exhibit A, Project Site.

B. Grant. TPL will be responsible for the design and construction of two new playgrounds (the "Project") at the Project Site at no cost to the City. The Project will be funded by the Helen Diller Family Foundation ("Grantor") which has a pledge agreement with TPL. That pledge of money to TPL to construct brand new playgrounds on the Project Site is intended to cover the costs of all services and consultant fees, permit fees and construction costs associated with the playground design and construction provided, however, that the total amount pledged shall not exceed \$5 million dollars.

C. Dedication. Upon approval of this Agreement, RPD will promptly seek Commission approval to name the newly renovated playgrounds ("Playgrounds") the "Helen Diller Civic Center Playgrounds" in a manner consistent with the Park Code and Commission policy. Such approval shall be contingent upon RPD's Final Acceptance of the Playgrounds in accordance with Section 12. The signage identifying the name of the Playgrounds shall be conspicuously located and shall be at least as large as the current Helen Diller Playground signage at Mission Dolores Park. Upon Final Acceptance, any promotional materials or press or public relations materials related to the Playgrounds shall refer to the Playgrounds as the "Helen Diller Civic Center Playgrounds."

D. Timeline. TPL and RPD acknowledge that time is of essence to the Grantor, who desires the Project to be built according to the Timeline attached as Exhibit B. The Parties may modify the Timeline only by written agreement. If the Project is significantly delayed before construction starts, TPL and RPD understand that the Grantor may terminate the pledge agreement and TPL may terminate this Agreement pursuant to *Section 14(a)*.

E. Gift Approval. On *9/16* 2014 by Resolution No. *MO9-2008* the San Francisco Recreation and Park Commission approved this Agreement, and recommended that the Board of Supervisors accept from TPL (1) an in-kind gift of design and construction services, fees, and costs currently valued at approximately \$4.915 million, and (2) cash gifts of \$54,600 to fund the services of one RPD Project Manager to coordinate the design and construction approvals process and \$30,000 to initiate the Special Maintenance Fund described in Section 16. City's acceptance of the Gifts is conditioned upon approval from the Board of Supervisors.

NOW, THEREFORE, subject to and effective upon the execution of this Agreement by both Parties, the Parties agree as follows:

- 1) Term. This Agreement shall become effective upon approval by the Board of Supervisors and full execution by the Parties. Except with respect to any provisions of this Agreement

which expressly survive the Acceptance Date (as defined in Section 12) or the earlier termination of this Agreement in accordance with Section 14, this Agreement shall expire on the earlier of the Acceptance Date or the earlier termination of this Agreement.

- 2) **Permission to Enter.** RPD confers on TPL a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use the Project Site owned by City for the limited purpose of design and construction of two new Playgrounds subject to the terms, conditions and restrictions set forth below. This Agreement gives TPL a license only, revocable at any time at the will of City, and notwithstanding anything to the contrary herein, this Agreement does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Project Site, or any portion thereof.
- 3) **Design and Construction.** TPL, at its own expense and at no cost to the City, will develop a Concept Plan, which shall be subject to approval by the Recreation and Parks Commission. Thereafter TPL, at its own expense and at no cost to the City, shall provide all labor, materials, and project and construction management services necessary for the completion of design and the construction of the Project in accordance with the approved Concept Plan and the Timeline outlined in Exhibit B. Such services shall include all necessary design services leading to fully permitted Plans and Specifications (“Plans and Specifications”) for the Project, and construction management services necessary to build the Project. TPL shall be responsible for fully incorporating comments from RPD staff in the Plans and Specifications and shall be responsible for ensuring that the Plans and Specifications comply with all applicable laws, statutes, ordinances and governmental rules and regulations, including, without limitation, all federal and state laws governing disability access. TPL shall be responsible for obtaining, at its own expense and at no cost to the City, all permits and governmental approvals necessary to complete the Project. TPL shall select, hire and manage a licensed contractor (the “General Contractor”) of its choice to perform all services relating to site preparation and construction of the Project, subject to all applicable requirements of this Agreement. TPL shall certify to RPD that it has in place all funds necessary to complete construction of the Project, and RPD shall have no obligation to fund any shortfall in funding for construction of the Improvements. Within 14 days of TPL demonstrating satisfaction of all conditions set forth in this Section and Sections 4 and 8, RPD shall issue a Notice to Proceed to TPL.
- 4) **TPL Payments.** TPL shall provide evidence satisfactory to RPD of Landscape Architect’s and General Contractor’s acknowledgement that RPD is not a party to any design or construction contract and has no obligation or liability thereunder. In connection therewith, TPL shall provide or cause to be provided to the City fully executed waivers and releases from the Landscape Architect, General Contractor, and all other contractors and subcontractors hired by TPL, waiving any rights of such parties to make claims against City and releasing City from all liability to such parties in connection with performance of any obligations contemplated in the construction contracts.
- 5) **RPD Staffing.** TPL shall provide RPD with approximately \$54,600 to fund the services of an RPD Project Manager. The RPD Project Manager shall be responsible for assisting TPL with internal RPD approvals, and agency coordination as needed to complete the Project. TPL shall provide the funds to RPD in two installments as follows:
  - a) Design Phase: \$27,300, to be delivered to RPD upon RPD’s approval of the Concept Plan.
  - b) Construction Phase: \$27,300, to be delivered to RPD upon issuance of the Notice to Proceed.

- 6) Meetings. During Design and Construction, TPL and RPD staff will participate in regularly scheduled weekly progress meetings to ensure that the design meets RPD's requirements, keep abreast of construction activity, and ensure that the work (the "Improvements") is consistent with approved Plans and Specifications.
- 7) Construction Inspections. RPD, TPL and TPL Construction Manager will conduct on-site construction inspections and approvals, per a pre-determined schedule of critical work, to ensure that construction of the Improvements conforms to the Plans and Specifications. Upon substantial completion, TPL Construction Manager will prepare a punch list in coordination with RPD, which will need to be executed prior to Final Acceptance pursuant to Section 12.
- 8) Insurance.
  - a) Without limiting the indemnification required by this Agreement, TPL shall maintain and cause all contractors hired by TPL to maintain the following insurance at all times during the Term of this Agreement:
    - i) Worker's Compensation, with Employer's Liability limits not less than \$1,000,000 each accident; and
    - ii) Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage; and
    - iii) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Personal Injury, Products and Completed Operations; and
    - iv) Professional Liability Insurance with limits not less than \$1,000,000 each claim with respect to negligent acts and errors and omissions arising from performance of services under this Agreement.
  - b) Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-, VIII" and shall be subject to the prior approval of the City.
  - c) Comprehensive General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:
    - i) Name as Additional Insured the City and County of San Francisco, its Officers, Agents and Employees.
    - ii) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
    - iii) Joint Ventures/Partnerships: Each participant in the joint venture/partnership must include the joint venture or partnership as a Named Insured on each of their separate policies, with respect only to the interests and activities of that participant in the joint venture or partnership.
  - d) 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. Notwithstanding anything to the contrary in this Agreement, upon the lapse of any required insurance

coverage, RPD shall have the right to terminate this Agreement upon Seven (7) days' prior written notice to TPL. TPL shall be responsible, at its expense, for separately insuring TPL's personal property.

- e) Should any of the coverage be provided under a claims-made form, the coverage shall be maintained 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.
  - f) 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.
  - g) 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.
  - h) Before each contractor commences any operations under this Agreement, TPL or the contractor must furnish to City certificates of insurance and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City request.
- 9) Indemnification. The Parties' obligations under this Section shall survive the expiration or other termination of this Agreement. Each party agrees to waive claims against and indemnify the other party as follows:
- a) TPL agrees to defend, indemnify and hold harmless the City, its officers, employees and agents ("**City Indemnitees**") from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of TPL, its officers, directors, employees, agents, contractors or subcontractors in connection with this Agreement, except those arising by reason of the sole negligence of the City Indemnitees.
  - b) City agrees to defend, indemnify and hold harmless TPL, its officers, directors, employees and agents ("**TPL Indemnitees**"), from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of City, its officers, employees and agents in connection with this Agreement, except those arising by reason of the sole negligence of TPL Indemnitees.
  - c) In the event of concurrent negligence of City Indemnitees and TPL Indemnitees, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.
- 10) Landscape Architect Contract. In addition to reflecting the insurance requirements set forth in Section 8 above, TPL's contract with any design professional shall include language incorporating the following terms and conditions:

- a) **Construction Support.** The Landscape Architect shall be retained for the duration of Project construction and shall provide TPL and the City with construction support services related to the Project. Notwithstanding the foregoing, TPL shall be free to replace the original Landscape Architect, provided that any replacement Landscape Architect satisfies the terms of this Agreement including, without limitation, providing construction support services related to the Project.
  - b) **Code Compliance.** The Landscape Architect shall comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Architect's services. Where there is an irreconcilable discrepancy between any of the above mentioned codes and regulations, the Architect 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. The Architect 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 pending changes to the California building codes and San Francisco Building Code and other amendments.
  - c) **Standard of Performance.** The Landscape Architect shall acknowledge and agree that its services under the agreement shall be performed 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.
- 11) **Construction Contract.** In addition to reflecting the applicable insurance provisions of this Agreement, any contract TPL executes for construction of the Project shall name the City as a third-party beneficiary (including, without limitation, as to all warranties of the work), and as an additional obligee of all required performance bonds and shall include language incorporating the following terms and conditions:
- a) **Bonds.** At the time of execution of a contract for construction of the Improvements, General Contractor shall file with TPL a corporate surety bond, in a sum not less than 100 percent of the value of the construction contract, to guarantee the faithful performance of the contract ("**Performance Bond**"); and a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("**Payment Bond**"). The Performance Bond shall cover all corrective work required during the correction period, any warranty and maintenance work required by the contract, and any and all work required to correct latent defects. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the City.
  - b) **Warranty.** General Contractor warrants and guarantees to the City that materials and equipment provided under the contract 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 Plans and Specifications. General Contractor additionally warrants all manufacturers' warranties for products delivered as part of the Improvements.
  - c) **Indemnification.** See Exhibit C for Contractor Indemnification Requirements.
  - d) **Prevailing Wages:** TPL will require all Contractors and subcontractors to pay their workers the prevailing rate of wage for the craft or classification of work performed.

- 12) Final Acceptance. Upon notice from TPL that the Improvements undertaken by TPL are complete, in accordance with the Plans and Specifications, and that TPL has obtained all necessary regulatory approvals, and upon submission to the City of the waivers and releases and assignments required under Sections 4 and 13 of this Agreement, RPD shall, within ten (10) working days of such notice, perform a final inspection. Contingent on conducting this inspection, RPD must receive as-built drawings that are marked-up on hard copy of Plans and Specifications, operating manuals, all warranties and any additional requirements as outlined in the Plans and Specifications. Upon RPD's inspection and decision to accept the work, RPD will, no later than seven (7) days from such decision to accept the work prepare a letter of final acceptance (the "Acceptance Letter") addressed to TPL, which shall be effective on the date of its issuance ("Acceptance Date"). Upon receipt of the Acceptance Letter, TPL shall immediately remove all of its property from the Project Site and shall repair, at TPL's cost, any damage to the Project Site caused by such removal or caused by TPL's construction activities in the Project Site as permitted hereunder, and shall with the exception of the land underneath the Improvements and subject to the Plans and Specifications, restore the Project Site to its condition prior to construction of the Improvements undertaken by TPL. Prior to delivery of the Acceptance Letter to TPL, the Improvements shall not be open to the public. If the Improvements are nonetheless opened to the public by the City before the Acceptance Date, that action shall be deemed to be the equivalent for all purposes of the City providing TPL with an Acceptance Letter.
- 13) Delivery of Improvements. TPL shall deliver the Improvements undertaken by TPL free of all liens, easements or potential claims and shall provide RPD fully executed waivers and releases from all contractors and subcontractors hired by TPL of all claims against the City, its employees and agents. Upon delivery of the Improvements undertaken by TPL, TPL shall assign to the City any warranties or guaranties required by its contracts with the contractors and subcontractors hired by TPL. TPL shall also assign to the City the right to any available remedies for latent defects.
- 14) Early Termination and Notices.
- a) Either party may terminate this Agreement upon 10 days written notice at any time before TPL has awarded and approved a construction contract to build the approved Project at the Project Site. In the event of such a termination, the City shall have no responsibility to TPL with respect to any costs TPL may have incurred as contemplated by the terms of this Agreement.
  - b) After the award and approval of a construction contract as contemplated by this Agreement, TPL may terminate this Agreement only due to the City's failure to comply with any term of this Agreement (including all Exhibits hereto) 30 days after having given the City notice of such failure, unless the City cures such failure to the TPL reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.
  - c) After the award and approval of a construction contract as contemplated by this Agreement, the City may terminate this Agreement due to TPL failure to comply with any term of this Agreement (including all Exhibits hereto) 30 days after having given TPL notice of such failure, unless TPL cures such failure to the City's reasonable satisfaction within such 30-day period, or a different reasonable timeframe mutually agreed upon by the Parties in writing.
  - d) Notice of termination, and any other notices under this Agreement, shall be provided to each Party at the addresses below. The Parties' addresses for purposes of such notices are :

TRUST FOR PUBLIC LAND	SF RECREATION AND PARK DEPARTMENT
Alejandra Chiesa, Project Manager The Trust for Public Land 101 Montgomery Street – Suite 1100 San Francisco, CA 94104	Philip A. Ginsburg, General Manager SF Recreation & Park Dep't 501 Stanyan Street San Francisco, CA 94117
Gilman Miller, Senior Counsel The Trust for Public Land 101 Montgomery Street – Suite 1100 San Francisco, CA 94104	Dawn Kamalanathan, Director of Planning & Management SF Recreation & Park Dep't 30 Van Ness Avenue, 5th Floor San Francisco, CA 94102
Tim Ahern, Media Director The Trust for Public Land 101 Montgomery Street – Suite 1100 San Francisco, CA 94104	Office of the City Attorney Recreation & Park Dep't General Counsel City and County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

- 15) Maintenance. After Final Acceptance of the Project, RPD will, at a minimum be responsible for maintenance of the Project Site in accordance with the most recently adopted "Prop C" park maintenance standards, or any successor general maintenance standards that may be adopted by RPD. The Parties intend to work together to identify an organizational partner to share maintenance responsibility with RPD according to the terms of a separate agreement consistent with the maintenance goals set forth in Exhibit D. After RPD approval of the Concept Plan, the Parties may amend the provisions of Exhibit D. Notwithstanding any other provision of this Agreement, the General Manager is hereby authorized to approve any changes to the provisions of Exhibit D; upon written approval from the Parties, any such change shall be incorporated into this Agreement as an amendment.
- 16) Special Maintenance Fund. RPD will maintain a dedicated fund to be used to pay for Non-Routine Maintenance Items (the "Special Maintenance Fund") as identified in Exhibit D. RPD's obligation to maintain such a Special Maintenance Fund is subject to the budgetary and fiscal provisions of the City Charter and San Francisco Administrative Code. Funds may be disbursed from the Special Maintenance Fund only to pay for Non-Routine Maintenance Items as identified in Exhibit D. RPD will seek budget approvals and use good faith efforts to maintain a \$30,000 balance in its Special Maintenance Fund from year to year, and any amounts outstanding in the fund will roll over from year to year.
- 17) No Tobacco Advertising. The Parties acknowledge and agree that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property, which is the subject of this Agreement. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.
- 18) Public Relations. RPD and TPL shall use good faith efforts to cooperate on matters of public relations and media responses related to the Project. The Parties shall also use good faith

efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. This Agreement, and any report or memorandum between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act.

- a) Any response to an inquiry by a news or community organization to RPD or TPL regarding the Project shall include a recommendation to contact the other Party. Neither TPL nor RPD shall issue a press release in regard to this Agreement without providing prior notice to the other party. To facilitate the execution of this Section, the Parties have each designated one person as a spokesperson regarding this Agreement. All media contacts to RPD will be directed to Sarah Ballard, Director of Policy and Public Affairs, 501 Stanyan Street, San Francisco, CA 94117. All media contacts to TPL will be directed to Tim Ahern at the address provided for TPL in Section 14 above.
- b) At a time and in a format to be determined by the Parties, RPD and TPL may hold at least one joint public event, such as a ground breaking ceremony or ribbon cutting ceremony. At any such event, the Parties shall participate on an equal basis. If RPD or TPL holds any other event solely or largely dedicated to the Project, the Parties shall, as time permits, 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 TPL.
- c) Nothing in this Agreement shall prohibit TPL or RPD from discussing this Agreement in response to inquiries from the public or the press.

19) Miscellaneous.

- a) The Parties may enter into additions, amendments, or other modifications to this Agreement (including, without limitation, preparation of any or all of its Exhibits) that the Recreation and Park Department's General Manager, in consultation with the City Attorney's Office, determines are in the best interest of the City, do not materially decrease the benefits of the Agreement to the City, do not materially increase the obligations or liabilities of the City, do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, and are necessary or advisable to complete the transactions which the Agreement contemplates and effectuate the purpose and intent of this Agreement. Any other additions, amendments, or modifications require approval from the Recreation and Park Commission.
- b) 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.
- c) All actions described herein including but not limited to the construction of the Improvements on the Project Site as permitted herein, are subject to and must be conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code and applicable state and federal laws, building codes and regulations.
- d) 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.

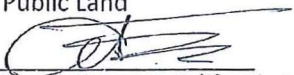


- e) RPD reserves the right to remove or alter any or all site Improvements in its sole discretion to protect the public health, safety and welfare. Except where an emergency requires immediate action to protect public health and safety, RPD shall make good faith efforts to meet and confer with TPL in advance of any such action and make good faith efforts to retain or restore the Improvements. This provision shall survive the expiration or other termination of this Agreement.

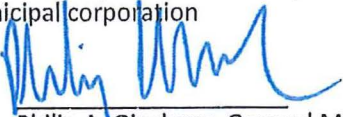
IN WITNESS WHEREOF, the undersigned have indicated their approval effective as of the respective dates set forth to their names.

APPROVED:


Trust for Public Land

By:   
Gina M. Fromer, California State Director  
Trust for Public Land  
Date: 11.5.14

City and County of San Francisco,  
a municipal corporation

By:   
Philip A. Ginsburg, General Manager  
Recreation and Park Department  
Date: 11.5.14

APPROVED: RECREATION AND PARK COMMISSION

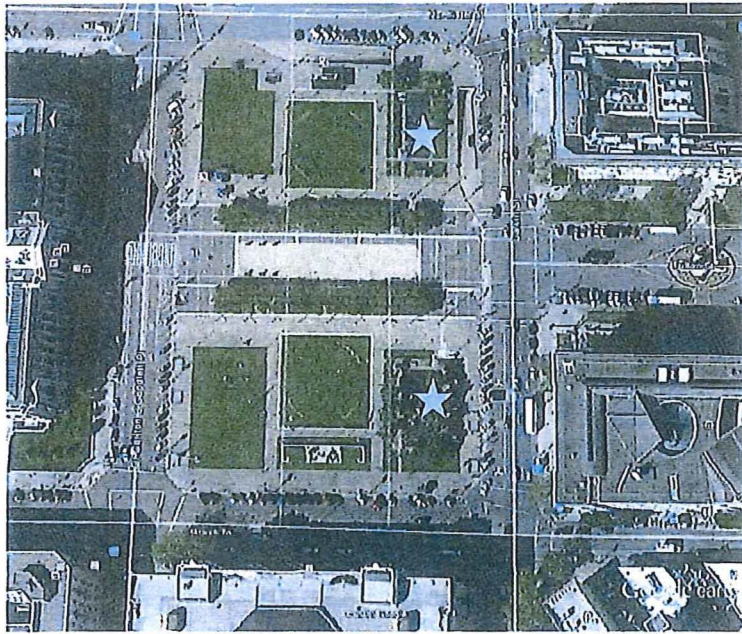
By:   
Margaret McArthur, Secretary  
Date: 9/16/14 *MNC*  
Resolution No. 1409-008 *MNC*

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
CITY ATTORNEY

By:   
Julia M. C. Friedlander  
Deputy City Attorney

- Exhibit A: Project Site
- Exhibit B: Project Timeline
- Exhibit C: General Contractor Indemnity Requirements
- Exhibit D: Maintenance

Exhibit A  
Project Site



	2014												2015												2016												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
PROJECT INITIATION																																					
CONCEPT PHASE																																					
APPROVALS																																					
SCHEMATIC & DESIGN DEVELOPMENT																																					
CONSTRUCTION DOCUMENTS																																					
PERMITS & CONSTRUCTION																																					

Exhibit B  
Project Timeline

Exhibit C  
General Contractor Indemnity Requirements

TPL's contract with the General Contractor shall include language incorporating the following terms and conditions:

- 1) Consistent with California Civil Code Section 2782, General Contractor shall assume the defense of, indemnify and hold harmless the City, 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 "City Indemnitees", from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any City Indemnitee.
- 2) The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to General Contractor for any type of special, consequential or incidental damages arising out of or connected with General Contractor's work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or rescission of any Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.
- 3) General Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise 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 on the Project 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.
- 4) On request, General Contractor shall defend any action, claim or suit asserting a claim covered by this indemnity. General Contractor shall pay all costs that may be incurred by the City and all City Indemnitees, including reasonable attorney's fees.
  - a) The City shall provide General 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 General Contractor from any obligation hereunder. General Contractor shall obtain the City's and other indemnified parties' consent for General 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 parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of General Contractor and the City and/or other indemnified party conflict and counsel chosen by General Contractor cannot, in City's or other indemnified parties' reasonable opinion, adequately represent General Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other

indemnified party retaining separate co-counsel shall be borne by General 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 General Contractor's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist General 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.

- b) So long as General Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) General Contractor will not consent to the entry of any judgment or enter into 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 General Contractor and does not impose any obligation upon City and/or other indemnified party in connection with such judgment or settlement and General 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 General Contractor.
- c) If General 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 Exhibit C.

Exhibit D  
Maintenance

- 1) Maintenance goal. The Parties intend that the Playgrounds be maintained in a way that ensures that the quality, craftsmanship, and over-all integrity of the design of the Playgrounds is preserved, including replacement of play equipment and "Design Features" with new equipment and features of similar or better quality to that in place when the Playgrounds opened. "Design Features" shall mean the entire built environment, and each component part thereof, within the Playgrounds, including but not limited to play equipment, surface materials, landscaping, sidewalks, walls, stone features, and wooden features.
- 2) Routine Maintenance. RPD shall be responsible for routine maintenance of the Playgrounds, which routine maintenance shall include but not be limited to:
  - a) sweeping and maintenance of sidewalks and surface areas;
  - b) removal of graffiti from sidewalks, play equipment and Design Features;
  - c) inspection of play equipment and Design Features for structural integrity; cracking and rust; splinters; and to assure proper anchoring to surface areas
  - d) inspection of painted surfaces for bubbling, cracking, or fading and routine stripping, re-painting, and touch-up of painted or finished surfaces;
  - e) inspection of surface areas for gaps, settling, and non-level transition areas;
  - f) repair, leveling and touch-up work on surface areas;
  - g) inspection and replacement of small portions of rubberized surface coverings, should such surface coverings become substantially damaged or degraded.
  - h) maintenance of landscaping;
  - i) other routine maintenance tasks;
- 3) Non-Routine Maintenance. The Parties anticipate that due to the state-of-the-art nature of the Playgrounds, from time to time maintenance issues will arise that will require the purchase of special equipment or materials, or securing outside expertise or skills. Any such maintenance issue will be deemed to be a "Non-Routine Maintenance Item". Non-Routine Maintenance Items are anticipated to include, but are not limited to:
  - a) replacement or repair of specified Design Features or play equipment, should they become substantially damaged or degraded, including but not limited to those that cannot be purchased by RPD through qualified City vendors, or repaired by RPD staff
  - b) purchase of maintenance equipment that can only be used on the Playgrounds and not at other RPD facilities or parks;
  - c) other maintenance, repair or replacement tasks related to the play equipment and Design Features that would not reasonably be considered to be routine maintenance tasks; and
  - d) redesign services to accommodate substantial changes to the Playgrounds over time.